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DECEMBER, 1926

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THE JUDICIAL COUNCIL

(From a picture taken at the Meeting of November 30, 1926, when the Second Report was completed.)

SECOND REPORT

OF THE

JUDICIAL COUNCIL OF MASSACHUSETTS

CREATED BY CHAPTER 244 OF THE ACTS OF 1924

WAIVER OF JURY TRIAL IN CRIMINAL CASES IN THE SUPERIOR COURT

(The Opinion of the Supreme Judicial Court in Commonwealth v. Rowe.)

Issued Quarterly by the
MASSACHUSETTS BAR ASSOCIATION, 60 State St., Boston, Mass.

INTRODUCTORY STATEMENT

The second Report of the Judicial Council of Massachusetts was filed with His Excellency the Governor on December 1, 1926. Reprints were obtained and bound up herein so that members of the Association may have an opportunity to examine the report and express any views which they may have in regard to the subjects discussed at the annual meeting of the Association, which will be held in the Chamber of Commerce Building adjoining the Hotel Bancroft, in Worcester, on Saturday, December 18, at 11 A. M. The first Report of the Council, which is referred to in the following report, will be found in the *QUARTERLY* for November, 1925.

In order that the members may see what the Judicial Council looks like, a picture taken at the last meeting when the second Report was completed is here reproduced. By permission of the Supreme Judicial Court, the meetings of the Council are held in the Mahogany Room in the Boston Court House opposite the full bench court room.

As the subject of waiving the right to jury trial in criminal cases has been frequently discussed in this magazine, the recent opinion of the Supreme Judicial Court in *Commonwealth v. Rowe* which is referred to in the report of the Judicial Council is reprinted at the end of this number.

F. W. GRINNELL,

Secretary







JUDGE PREST JUDGE FESSENDEN JUDGE LORING JUDGE DAVIS JUDGE MILLIKEN
 F. W. GRINNELL R. G. DODGE A. L. GREEN F. W. MANSFIELD

THE JUDICIAL COUNCIL OF MASSACHUSETTS

(From a picture taken at the Meeting of November 20, 1920, when the Second Report was completed.)

SECOND REPORT
OF THE
JUDICIAL COUNCIL OF MASSACHUSETTS

CREATED BY CHAPTER 244, ACTS OF 1924

NOVEMBER, 1926



To

In
of 1
Jud

The Commonwealth of Massachusetts

NOVEMBER 30, 1926.

To His Excellency ALVAN T. FULLER,
Governor of Massachusetts.

In accordance with the provisions of chapter 244 of the General Acts of 1924 we have the honor to transmit the second annual report of the Judicial Council.

WILLIAM CALEB LORING.
FRANKLIN G. FESSENDEN.
CHARLES T. DAVIS.
WILLIAM M. PREST.
FRANK A. MILLIKEN.
ADDISON L. GREEN.
ROBERT G. DODGE.
FREDERICK W. MANSFIELD.
FRANK W. GRINNELL.

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ACTS OF 1924, CHAPTER 244.

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council", the following three new sections:— *Section 34A.* There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve.

Approved April 12, 1924.

MEMBERS OF THE COUNCIL.

WILLIAM CALEB LORING of Boston, *Chairman*

FRANKLIN G. FESSENDEN of Greenfield
WILLIAM M. PREST of Boston
ADDISON L. GREEN of Holyoke
FRANK W. GRINNELL of Boston, *Secretary*

CHARLES T. DAVIS of Marblehead
FRANK A. MILLIKEN of New Bedford
ROBERT G. DODGE of Boston
FREDERICK W. MANSFIELD of Boston

SECOND REPORT

OF THE

JUDICIAL COUNCIL OF MASSACHUSETTS.

To His Excellency

ALVAN T. FULLER,
Governor of Massachusetts.

The first report of the Judicial Council under St. 1924, chapter 244 (a copy of which is printed on the opposite page), was filed with Your Excellency on November 30, 1925. During the past year, as in 1925, the Council has held meetings each fortnight except in July and August and weekly meetings during October and November, much time having also been devoted to the work of the Council between meetings. During the first few months of the year while the Legislature was in session, the Council was occupied in the preparation of three special reports and in considering various drafts of pending legislation relating to the courts as to which their views were requested informally at various stages of legislation.

First Special Report of January 12, 1926.

The three special reports referred to are printed in Appendix A of this report in order that all the reports of the Council may be collected together. The first special report was submitted in January in answer to a request of Your Excellency for suggestions as to the best method of giving precedence to trials of crimes of violence. This special report, which was printed as House Document 907, appears in Appendix A, p. 73. The legislature, by chapter 228 of the Acts of 1926 on recommendation of the Judiciary Committee, passed an act along the lines which we recommended but going further, and we think wisely further, than the terms of the act which we recommended. We believe chapter 228 to be a distinct step in advance.

Second Special Report of January 12, 1926.

The second special report, which appears in Appendix A, page 75, was a recommendation that the appropriation for the Superior Court be increased to enable the chief justice to have a full-time executive

clerk to assist him in the growing administrative work of his office. The reasons for their recommendation are stated in detail in the report. Accordingly, the 1926 budget contained a sufficient increase so that the chief justice now has the full-time executive clerk that he needs.

Special Report of February 24, 1926.

The third special report which was printed as House Document 1167 and will be found in Appendix A, page 77, contained one of the recommendations relating to criminal procedure, the substance of which was adopted by the legislature in chapter 329 of the acts of 1926. It had to do with expediting the final disposition of criminal cases after a verdict of guilty in which questions of law were raised for the consideration of the Supreme Judicial Court. The resulting act, chapter 329, provides that the proceedings in any felony case may be taken by order of a justice of the Superior Court stenographically and in case of appeal sent up to the Supreme Judicial Court on the typewritten transcript, as was provided by chapter 279 of 1925 for murder and manslaughter cases. Chapter 329 also went further than the act of 1925 and provided that all such criminal cases thus appealed shall be entered by the clerk within ten days at the next law sitting of the full bench of the Supreme Judicial Court for the county in which the case is pending or for the Commonwealth at Boston, whichever comes first. It also provides that exceptions in any other criminal case in any county may by order of a justice of the Superior Court be entered at a sitting of the Supreme Judicial Court for the Commonwealth in Boston, instead of waiting for the next sitting of the full bench for the county in which the case arises. The purpose of this act was to avoid as far as practicable the delays in appealed cases which, as stated in the report, "furnish material for much public misunderstanding of the administration of justice."

The recommendation of the Council went somewhat further than the act, which was adopted as chapter 329, in that the Council recommended that all criminal cases, in which there were appeals or exceptions, should be entered at the next sitting of the full bench of the Supreme Judicial Court wherever it might be held, whereas chapter 329 only requires such entry in felony cases which are brought under the act of 1925 by order of the court. As to other criminal cases not thus dealt with, chapter 329, section 10, gives the justice presiding at the trial the discretionary power to order the exceptions entered at the sitting of the full bench in Boston and thus places upon the judge the responsibility for delay in the disposition of such exceptions where there are no special circumstances warranting delay.

In this special report, the Judicial Council also suggested that if the plan for expediting criminal cases on appeal were adopted, the full bench of the Supreme Judicial Court of the Commonwealth "should hold an adjourned sitting at the end of June for hearing and determining questions of law in criminal cases," thus providing an opportunity to clear up the criminal appeal docket from all parts of the state before the summer months. As the substance of the proposed plan for expediting criminal appeals has been adopted by chapter 329, the Council now repeats this suggestion for the consideration of the justices of the Supreme Judicial Court as a co-operative plan to carry out more effectively the purpose of chapter 329. No legislation is needed for this purpose as the court can simply hold an adjourned sitting at Boston for the hearing of criminal cases only which, in all probability, will not require more than a day or two. The reasons for the recommendation and suggestion of the Council will be found in detail in the special report in Appendix A.

The Council also made one further recommendation as to the act of 1925, which was not adopted by the Legislature. It was as follows:

When there is an original indictment for manslaughter only the case may or may not be a particularly serious one. In the opinion of the Council the procedure brought into being by St. 1925, c. 279, ought not to apply to cases of manslaughter unless the presiding justice so directs.

The Council is still of this opinion.

The Council also considered and approved the suggestion which was informally made to the Judiciary Committee in regard to the settlement of forfeited bail cases, the substance of which was later incorporated in section 2 of chapter 340 of the acts of 1926.

RECOMMENDATIONS IN THE FIRST ANNUAL REPORT OF 1925.

There were fourteen specific recommendations with drafts of legislation submitted in the first report. Of these, several were adopted in whole or in part as follows:

First, the Council recommended that St. 1923, chapter 469 (as amended by St. 1924, chapter 485) be made permanent. This act authorizes the chief justice of the Superior Court to call up justices of the District Court to sit in the Superior Court and try cases of misdemeanor except conspiracy and libel with juries. The act was originally an experiment until July 1, 1926. The legislature, by chapter 285 of the acts of 1926, extended the operation of this act until July 1, 1927. For the reasons stated in the first report of the Council, pages 18-19, we believe "the power to call on these judges should be made permanent"

although "the system must be studied with a view to changes which will gradually reduce the congestion requiring this service" and "taking it as a whole, it is a measure of possible relief which, in the present and possible future congested condition of the docket of the Superior Court from time to time, ought to be continued. To let the practice of calling up justices of the District Courts come to an end now would be to cut down the present judicial force of the Superior Court."

The Council is still of the opinion that it is of vital importance that the statute should not be allowed to lapse on July 1, 1927. An act to continue it in force is to be found in our First Report, Appendix C, page 135.

Other recommendations of the Council were adopted as follows:

Chapter 138 provides that the Superior Court shall make its own rules in equity.

Chapter 168 provides that "The court shall take judicial notice of the law of the United States or of any state, territory, or dependency thereof or of a foreign country wherever the same shall be material."

By the adoption of this act, Massachusetts took a pioneer step which we believe to be in advance of any other English speaking jurisdiction as to the way in which the question is to be dealt with when the law of another state or of a foreign country becomes material in a domestic action.

Other acts recommended by the Council were *chapter 177* regulating a detail in practice as to exceptions in suits in equity and *chapter 381* as to notice to admit facts and documents. This chapter 381 is intended to make the present law more effective. It did not go as far in this respect as the recommendation of the Council (see First Report, p. 144).

Waiving Juries in the Superior Court.

In its First Report the Judicial Council recommended the enactment of a statute to give to defendants in criminal cases (other than capital cases) the opportunity to waive the right to trial by jury. The Judiciary Committee reported favorably a bill to carry this recommendation into effect, which was ordered to a third reading in the House. Later on because the question of the constitutionality of such a proceeding was in issue in the case of *Commonwealth v. Rowe* then pending before the Full Bench of the Supreme Judicial Court, the Legislature referred the bill to the next session. The Full Bench has now decided the case of *Commonwealth v. Rowe*; see *Advanced Sheets*, p. 1755. In that case the Full Bench decided that under the present statutes the Superior Court had no jurisdiction to try criminal cases without a jury, but that there is nothing in the Constitution which prevents a defendant

in a criminal case waiving his right to a jury trial if he wishes to do so. In the words of the opinion of the court in that case: "The Legislature which imposed the limitation (that the trial of facts in criminal cases in the Superior Court should always be by a jury) can remove it. In doing so it will be acting within its constitutional powers as the right of the accused to a jury trial on the disputed facts will not be lessened."

We repeat our recommendation of last year that a statute should be enacted to give defendants in criminal cases (other than capital cases) an opportunity to waive the right to trial by jury and we submit for that purpose the form of bill in our First Report, Appendix C, p. 140.

We have included in our draft act the clause "by leave of court" as it seems to us that this judicial discretion should be provided for to enable the judge to deal with a case in which the defendant does not appear to understand clearly what he is doing or in cases in which there are a number of defendants and some of them waive their jury trial while some insist upon trial by jury. Where there are a number of defendants, we think it should be within the discretion of the court to decide whether the interests of justice would be best served by a trial of all defendants before a jury or separate trials of some defendants before a jury and some before a court. In Maryland, as pointed out by Chief Judge Bond in his account reprinted in the Appendix to the first Report of the Judicial Council (see p. 108), the election of some defendants of one form of trial and some of another "carries with it a right to compel a severance and separate trials in any case on joint indictment. The tactical resources of defendants are, of course, added to by this."

We do not think it necessary or advisable to add to the "tactical resources" of defendants in this respect. Accordingly, if a case arises of a joint indictment of several defendants who, the court believes, should all be tried at the same time, instead of having separate trials, we think the court should be in a position to say to the defendants, unless there is some special reason for not doing so, "You may all waive a jury if you wish but, unless you all waive, the trial will be by jury." If there are special circumstances which seem to warrant a severance and separate trial of one or more of the defendants, because of prejudice or some other reason, the court would be in a position to deal with it.

For these reasons we recommend the insertion of the clause "by leave of court."

Speedy Cause List.

The Judicial Council also recommended in its first report (pp. 60-62) as a suggestion to the Superior Court the adoption of a standing order

or rule for a "speedy cause" list for reasons stated in the report, pages 60-62. This plan was for a special list of cases in which the parties should agree to waive pleadings, rules of evidence, the right to file interrogatories, and the right to appeal or to take exceptions, on any question other than of substantive law. In other words, it was to provide for a hearing before a judge to be conducted like an arbitration hearing before an arbitrator. This was suggested as an experiment "If and when it could be fitted into the other work of the court." Thus far the court has not found it feasible to do this. Perhaps the court may try the experiment in future. Meanwhile, however, the Municipal Court of the City of Boston has tried the experiment by the adoption of a rule last spring in substantially the terms recommended by the Council. We are informed that very little use has been made by lawyers thus far of the opportunities offered by this rule. In view of the increasing interest in the subject of arbitration outside the courts, however, we believe that after the existence of this rule becomes better known to clients, who form part of the general public, some of them may prefer this opportunity to secure a prompt judicial decision rather than an award by laymen as arbitrators. The rule is not antagonistic to the arbitration movement — what it does is to make provision for something which many people have been clamoring for — namely, an opportunity to get prompt decisions in court made after trials stripped of technical rules. We wish to call the attention of the public at large to the fact that one court in the Commonwealth (with jurisdiction in cases involving amounts up to \$5,000.) has provided such an opportunity and that every case in which this opportunity is taken advantage of is likely to save time and money for everybody concerned, including the parties to the cause and the public upon whom now rests the expense of protracted trials conducted in the way in which they are now conducted.

The order of the court, to which we refer, appears in the following:

NOTICE

A "Speedy Cause" list will be called on Tuesday, Wednesday and Thursday, in the third session, to which list may be transferred, from the regular trial list.

- (1) Defaulted actions requiring assessment of damages by the court, and settlements of prochein ami cases requiring approval by the court, and upon which may be placed, by agreement on any such day,
- (2) Actions involving only questions of law, including cases to be submitted on written agreed facts, or as a case stated,
- (3) Actions in which the parties file a stipulation in the attached form. But the court may in its discretion remove such cause to the ordinary trial list.

Form of Stipulation

We agree that this case shall be placed on the "Speedy Cause" list on and waive, subject to the discretion of the court,

(1) Any further pleadings, (2) All rules of evidence, (3) The right to file interrogatories, and (4) The right to a report on any question other than of substantive law.

By order of the Court,

WILLIAM F. DONOVAN,
Clerk.

Other recommendations in the previous report, which have not yet been adopted by the legislature, we shall speak of later on.

THE REQUEST OF THE LEGISLATURE FOR A REPORT ON "MINOR VIOLATIONS" OF STATE LAWS, CITY AND TOWN ORDINANCES AND OTHER REGULATIONS GOVERNING THE OPERATION OF MOTOR VEHICLES.

By Chapter 37 of the Resolves of the General Court for this year the Judicial Council was asked to consider "what changes in the statutes may be necessary by way of promoting the expeditious disposition of minor violations of the laws relative to the operation of motor vehicles and of violations of city and town ordinances, by-laws and regulations affecting traffic" and to include in its Annual Report "its recommendations in relation to the foregoing subjects, and drafts of such legislation as may be necessary to give effect to the same." We were also asked to consider and report upon two Senate documents and one House document then before the General Court. A copy of the Resolve is set forth below in full.¹

We understand that by "minor violations of the laws relative to the

¹ RESOLVE REQUESTING AN INVESTIGATION BY THE JUDICIAL COUNCIL, RELATIVE TO STATUTORY CHANGES NECESSARY TO PROMOTE THE EXPEDITIOUS DISPOSITION OF MINOR TRAFFIC AND MOTOR VEHICLE LAW VIOLATIONS.

Resolved, That the judicial council is hereby requested to investigate and consider as to what changes in the statutes may be necessary by way of promoting the expeditious disposition of minor violations of the laws relative to the operation of motor vehicles and of violations of city and town ordinances, by-laws and regulations affecting traffic, and also as to the subject matter of senate documents one hundred and eighty-eight and two hundred and twenty-eight and house document five hundred and five of the current session, and to include its recommendations in relation to the foregoing subjects, and drafts of such legislation as may be necessary to give effect to the same, in its annual report for the current year.

operation of motor vehicles" is meant violation of those laws as to the operation of motor vehicles which deal with acts which in their essence are *mala prohibita* and not *mala in se*.

Violations of laws as to the operation of motor vehicles which are *mala in se*, such as operating a motor vehicle under the influence of liquor and like offences set forth in G. L., c. 90, §§ 23-24 and those set forth in G. L., c. 90, §§ 10 (operating a motor vehicle not being licensed so to do) and 25 (refusing when requested so to do to give name and address to a police officer). These are of such a serious nature that they should be classed with acts which are *mala in se*.

But there are many state laws, city and town ordinances and other regulations governing the operation of motor vehicles dealing with acts which in their essence are not criminal but which today are dealt with as if they were criminal. The violation of these state laws, city and town ordinances and other regulations are in their essence traffic regulations, not criminal laws, and ought to be dealt with accordingly. As an example of the character of these traffic regulations reference may be made to the list of warnings given by the police department of a Massachusetts city for the month of August of this year. This list of warnings is set forth below.¹

¹ LIST OF VIOLATIONS OF TRAFFIC REGULATIONS IN THE CITY OF NEW BEDFORD DURING AUGUST, 1926, WHERE WARNINGS WERE GIVEN BUT NO COMPLAINT TO THE COURT WAS MADE.

Warnings.

Operating too fast for conditions	55
Obstructing traffic	31
Parked without lights	28
Driving with rear light out	27
Parked in no parking area	25
Parked overtime	22
Driving with one headlight	17
Parked within 10 ft. of Theater Exit	11
Defective rear lamps	8
Improper operating	8
Mutilated plates	8
No registration certificate	8
License not on person	7
License not signed	6
Defective brakes	5
Dirty plates	5
Number plates obscured	5
No approved rear lamp	4
Parked within 10 ft. of crosswalk	4
Driving wrong way on a one-way street	4
Defective headlights	4
No mirror on truck	3
No muffler	3

In the first place (as we have already said) the violation of a motor vehicle law of minor importance or of a traffic regulation is not and should not be dealt with as a crime.

In the second place, it should, so far as that is feasible, be dealt with in an administrative manner; by that we mean that so far as it is possible all discretion in the administration of such motor vehicle laws and of traffic regulations should be eliminated.

And finally a distinction should be made between the way (1) in which the inadvertent operator is dealt with, (2) that in which the careless operator is dealt with and (3) the penalty or penalties inflicted upon the persistent violator.

It may be that in some jurisdictions and under some circumstances it would be wise to establish an administrative board to deal with the violations of state laws, city and town ordinances and other provisions which are in effect traffic regulations; and in other jurisdictions and under other circumstances it may be that it would be wise to create a traffic court or courts to deal with them alone or with them in conjunction with motor vehicle laws punishing acts which are criminal in their nature.

But under the circumstances which exist in Massachusetts neither of these two ways of dealing with the violation of motor vehicle laws of minor importance and of traffic regulations seems to the Council to be wise. For convenience we shall speak of motor vehicle laws of minor importance and of traffic regulations as traffic regulations.

In the seventy-three district courts (including the Municipal Court of the City of Boston) Massachusetts now has an organization which is adapted and well adapted to carry into effect an administrative enforcement of violations of traffic regulations governing the operation of motor vehicles.

No permit for homemade plates	3
Parked within 10 ft. of a white pole	3
Cutting in	2
Cutting out muffler	2
Dirty rear light	2
No rear lamp	2
No rear or front plate	2
Parked within 10 ft. of a hydrant	2
No certificate of weight on truck	1
No red glass in rear lamp	1
No white glass in rear lamp	1
Truck not marked with Wt. and Cap.	1
View of driver obstructed	1
No light on motor cycle side car	1
Total	322

It should be stated at the outset that an essential part of the scheme now proposed by the Council is that the license (which the operator is already required to carry with him when operating a motor vehicle and to produce whenever asked so to do by the proper authority) should set forth in full the operator's record with respect to any and all violations of state laws, city and town ordinances and other traffic regulations; or to put it in another way, each operator is to carry his record on his license and it is not to be left to public officials to hunt it up when his record is needed.

To carry into effect the Council's scheme a police officer who holds up an operator for an alleged violation of a traffic regulation must know at a glance by inspection of his license, no matter where he is held up, what his record is as to previous violations or alleged violations of traffic regulations no matter where these earlier violations or alleged violations took place.

So far as the scheme with which we are now concerned goes the entry upon the operator's license of the violation of state laws punishing acts which are criminal in their nature is not of consequence. But to avoid misunderstanding (although it is not now of consequence) it ought to be stated that in the opinion of the Council the operator's license should set forth his whole record with respect to the operation of motor vehicles including violations of laws having to do with acts which are criminal in their nature as well as traffic regulations, that is to say, with those which are not in their nature criminal.

This plan of requiring each operator of a motor vehicle to carry with him his record as an operator of motor vehicles in the opinion of the Council is fundamentally sound. So far as we know it has not yet been tried anywhere in the United States.¹ We believe that Massachusetts might well take the lead in adopting it. Its success depends upon thinking out to the smallest detail the best combination of convenience and effectiveness. We have some suggestions to make as to it now. Further suggestions as to details will be necessary and without doubt will occur to those whose duty it will be to think out to a conclusion the best way

¹ After this part of the report was written the attention of the Council was called to a similar provision in the English Motor Car Act, 1903. Section 4 of that act is (in part) in these words: "4. — (1) Any court before whom a person is convicted of an offence under this Act or of any offence in connection with the driving of a motor car other than a first or second offence consisting solely of exceeding any limit of speed fixed under this Act — . . . (c) If the person convicted holds any license under this Act shall cause particulars of the conviction and of any order of the court made under this section to be endorsed upon any license held by him." See Warde's Law of Motor Cars and Motor Accidents (1913), p. 4.

of making workable the central idea of the license being a traveling record of the licensee's operation of motor vehicles.

At the moment the Council has these suggestions to make as to the operator's license:

The license should be in a small book like that now used for a passport and should contain for the purpose of identification a photograph of the licensee as a passport does; it should have in the beginning of the book a copy of the statute enacted by the Legislature in this connection and at the end of it there should be a number of pages on which will be printed a list of violations of traffic regulations, blank notices to operators to be filled in by the police officer, and carbon sheets so that duplicate originals of the notices can be made (when the notice to the operator is written into the license) to be sent to the clerks of the district courts as explained later on. Each page of the license book and of the carbon copies should be numbered to prevent the removal of pages without a trace being left of that having been done. The license book could be made to last several years by the renewal of it on a different colored paper (for example) being pasted in each year. In any event a new license ought not to be issued to an operator guilty of an earlier violation or violations as if he had a clean slate at that time. If it were issued in the way just suggested for renewing the 750,000 licenses now outstanding, copying of the operator's record could be avoided.

If the license book, which has been suggested by us, is thought to be inconvenient for operators of motor vehicles, the license could be printed on a single sheet of paper and the blanks could be printed on the back of it. The photograph of the operator is not essential, neither are the carbon copies. What is essential is that in the back of the book, or on the back of the license, there shall be printed (1) blank notices to the operator, (2) blanks to be filled in on non-committal payments being made or penalties being paid voluntarily, (3) judgments rendered (with the necessary details of them) and (4) all payments of those judgments.

If the form of the license is not prescribed by the statute it might properly be left as a detail to be settled by the Registrar with a provision that the essential features set forth above should be incorporated in it. The form of the notices on the back of the licenses should be prescribed by rule of the district courts.

The scheme of the Judicial Council is this:

For the first and second violations or alleged violations in every license

year¹ (or the part of the license year adopted if a fraction of the license year is adopted in place of the whole license year) the operator is to be permitted to make what (for want of a better term) may be called a non-committal payment, or at his election he is to have the right to contest the fact of violation. By a non-committal payment is meant a payment by the operator to be made without his admitting that he did in fact violate the traffic regulation which the officer claims that he violated. The officer is to enter in the license book or on the back of the license if the suggestion of a license book is not adopted (by filling out a blank for the purpose printed in the back of the book or on the back of the license)² a notice to the operator to appear with his license at the clerk's office of the district court which has jurisdiction over the place where the alleged violation took place, at a day named and at an hour named to make the non-committal payment, if he wishes to make a non-committal payment in place of contesting the fact of violation. The day or days of the week and the hour or hours of the day or days set apart for making these non-committal payments in the clerks' offices of the several district courts will have been settled beforehand by the several courts and all police officers will have been duly notified of the days and hours adopted. It may be assumed that in remote parts of the state where the traffic is light it will be sufficient to set aside one hour on one day of the week. In those parts of the Commonwealth, however, where there is more traffic one hour on two days would perhaps be adopted. And in those cities where the traffic is greatest possibly one hour on each day of the

¹ If the calendar year is ultimately thought too long a period of time some fraction of the calendar year (in the opinion of the Council) ought to be adopted. It is important if not vital in carrying into effect the Council's scheme that when a police officer holds up an operator he should be able to learn at a glance the record of the operator in question for the period in question. It would hardly be feasible to have a different period of time for each operator. It is possible that by taking the calendar year or a specified part of the calendar year an operator whose license was issued in the latter part of the period adopted might receive more indulgence than one whose license was issued earlier in the period. But if that be an inequality in the enforcement of the Council's scheme it is an inequality which is inherent in it and cannot well be avoided. As a matter of convenience it might be worth while to have all licenses run for a calendar year or for the balance of the calendar year in which they are originally granted and after that for a calendar year.

² It would seem that the blank at the end of the operator's license book (if the license is issued in the form of a book) or on the back of the license (if it is not), which is to be filled in by the officer, should provide for the following details at least: (1) the date, (2) the town, (3) the offence, (4) the number of the police officer, (5) the court and time when and where the operator is to appear with his license and make the non-committal payment to the clerk of the Court in question. In addition there should be a blank for entry by the clerk of the sum paid as a non-committal payment and the date when paid if the operator makes a non-committal payment or of the fact that the operator failed to make the non-committal payment and further blanks to be filled in in that case as to the bringing and disposition of the civil action to collect the penalty including payment or non-payment of the judgment and the action taken consequent upon that.

week might be set apart for the making of these non-committal payments. It is to be noted, however, that these payments are to be made to the clerk in the clerk's office and that the making of these payments is a matter with which the court itself has nothing to do.

The officer, who has entered upon the license book of an operator a notice to make a non-committal payment, will at the end of the day deliver to his superior officer the duplicate carbon original of the notice so given, or if the suggestion that the license should be in the form of a book containing carbon sheets in the back of it is not adopted, the officer at the end of the day will deliver to his superior copies of the notices given by him to operators. The superior officer will send to the clerk of the district court in question all the carbon original notices or copies of the notices (as a license book is or is not adopted) handed to him by the officers under him.

In case an operator who is held up by the officer does not have his license with him the notice will be given by the officer on a separate blank with which he will be provided to meet that contingency, and the fact that the notice was so given can be stated on the license when the operator appears with his license before the clerk or before the court as he ultimately must do. In passing it may be suggested that the case of non-resident operators can be dealt with in a similar way.

When a non-committal payment is made the clerk will make (1) an entry of the payment (including the particular court in question and the date of the payment in the license book or on the back of the license of the operator in question) as well as (2) an entry of the payment upon his books as clerk of the court. At a time specified the clerks will pay over the payments thus collected to the proper public official entitled to receive them.

One thing further should be added with respect to these non-committal payments; that is that each operator making a non-committal payment shall (in addition to the amount required to be paid for the violation or alleged violation in question) pay a clerk's fee to meet the expense which the district courts will be put to in carrying on this additional work in the clerks' offices. It would seem that the amount of this clerk's fee should be \$3. One further detail should be added in this connection: In case an operator appears but does not bring his license with him the clerk should have authority to continue the matter to the next or another payment day of that clerk's office, so that the operator should have full opportunity to exercise his right of making the non-committal payment which is to be entered upon his license. In case authority is given to the clerk to make such continuance a second clerk's fee is to be paid

by the operator and prepayment of the additional clerk's fee should be made a condition on which the clerk's authority to grant the continuance is permitted.

The notice to the operator to make the non-committal payment if he wishes to take that course of action is to contain a statement that he has the right if he elects to do so to contest the fact of violation and the further statement that if he does not appear with his license at the day and hour specified in the notice and then and there make the non-committal payment he will be taken to have elected to contest the fact of violation in place of making the non-committal payment.

The suggestion has been made that in place of requiring an operator to make the two non-committal payments (which involves going to the clerk's office of the proper district court) two warnings should be entered by the police officer on the operator's license. In the opinion of the Council, justice to the operator requires that he have an opportunity to be heard on the fact of violation if he wishes to contest that fact before the two warnings are made a part of his record as an operator. Possibly the operator might be given the option (in case of the first two violations or alleged violations) of having a warning written in on his license or standing suit for a penalty in case he wishes to contest the fact of violation.

In case the operator elects to contest the fact of violation the clerk of the district court in question will begin, in the name of the Commonwealth, a civil action of contract to recover the penalty which is due for the violation for which the non-committal payment could have been made and notice of the beginning of the action and when it will be in order for trial will be sent by him (by registered mail) to the superior of the officer who reported the alleged violation in question. No entry fee will be required upon the beginning of such action; but if the Commonwealth prevails the usual entry fee shall be taxed against the defendant as is provided by G. L., c. 262, § 4, for cases similarly brought in the Supreme Judicial and Superior Courts. This civil action of contract shall be governed by the small claims procedure set forth in G. L., c. 218, §§ 21-25 (including notice by registered mail instead of the mode of service in ordinary actions) so far as the small claims procedure is or can be made applicable.

In case the Commonwealth prevails a judgment is to be entered for the payment of the penalty with costs and if that judgment is not paid and entered in the end of the license book or on the back of the license within a specified time after notice is given by registered mail (for example within ten days from posting the notice) his license is to be automatically suspended and so to continue until the judgment with interest at the rate

of 12% per annum has been paid to the clerk of the district court in question and the fact of payment is written in at the end of the license book or on the back of the license.

When in every license year or during the portion of a license year selected (if a portion of a license year is adopted rather than a whole license year) an operator has had the opportunity to make two non-committal payments, he has reached the stage where he is to be dealt with as a violator of traffic regulations.

When he is held up by a police officer for an alleged violation of a traffic regulation after he has had the opportunity of making two non-committal payments he will be notified to pay and if he does not pay upon notice he will be sued in a civil action of contract for a penalty larger in amount than the penalty for the second violation or alleged violation for which he was allowed to make a non-committal payment. And if he is held up a second time during this second stage or period the penalty will be still greater in amount.

When the operator has been adjudged guilty of three violations subsequent to the opportunity of making the two non-committal payments he has reached the third and last stage, namely, the stage where he is to be dealt with as a persistent violator of traffic regulations. For the first violation in this stage he will be sued in a civil action for a penalty still larger in amount, and in addition his license will be automatically suspended for a period of ten days and then continue suspended until the judgment for the penalty has been paid in full with interest at the rate of 12% per annum. Finally, for a second violation in this stage or period, while the penalty will be the same his license will be suspended and will not be renewed, all as has been just stated, except that the suspension of the license will be for the period of six months or for the balance of the license year whichever is the longer period of time, in place of its being suspended for the period of ten days.

As it is the purpose of the Council to devise a scheme for an administrative enforcement of traffic regulations the amount of the penalty will be a fixed sum in each and every instance although not the same sum for successive violations. It may be that in some instances the regulation violated is a regulation the violation of which is a serious matter and in another instance it may be one of less consequence and for that reason the imposition of the same penalty in both cases would have an element of inequality, and of what might be thought an element of injustice in it. But it is of the essence of an administrative enforcement of traffic regulations that all discretion should be wiped out at every stage and on every point from beginning to end.

There is a way in which this inequality can be avoided; that is, to have a schedule of classes of regulations with fixed sums for the successive violations of the regulations in the different classes. The Council is informed that some such an arrangement is in force in Chicago where all violations are treated as criminal acts. A copy of the schedules said to be in force there is set forth below in a note.¹ In jurisdictions where all the

¹ PENALTIES.

First Offense, \$1.00; Second, \$3.00; Third, \$5.00.

3820. Not keeping to the right.	3858. Parking — double line.
3859A. Parking in alleys in loop.	3859. Parking near hydrant.
3859C. With motor running.	3349. Obstructing street cars.
3856. Parking in prohibited zone.	3838. Failure to obey police.
3855. Parking during prohibited hours — overtime.	

First Offense, \$2.00; Second, \$5.00; Third, \$10.00.

2619. Blocking sidewalk.	3824. Not stopping, driving out of alley.
3837. Blocking traffic.	1709. Driving on bridge after signal.
2758. Not stopping, through street.	3980. Private vehicle in public stand.
3823. Not stopping, boulevard.	3761. Not observing zones of quiet.
3822. Improper turn.	3846. Speed, near church.
4016. Improper or no lights.	3831. Left side to curb.
4015. Lights, wrong adjustment.	3833. Backing to curb.
4010. Using searchlight.	3853. Parking at theatre or hotel.
3873. Towing without lights.	3850. Interrupting funerals.
3844. Speed, near school.	3876. Operating siren or gong.
3845. Speed, near playground.	3981. Taxicab cruising.
4014. Number plate — obscured — missing.	4001. Unnecessary noise.
3828. Failure to signal when starting, stopping, turning.	4002. Using cut-outs.
3947. Public vehicle outside authorized space.	4830. Projecting loads.
	21A. No mirrors on truck.

First Offense, \$5.00; Second, \$10.00; Third, Court.

3829. Driving against traffic.	4012. Failure to report to police after an accident.
3836. Driving left of center of street.	4019. Defective brakes.
3825. Not stopping 10 ft. from street car.	3742. Driving over curb.
4012. Driving away from accident.	3860. Right of way — fire department, etc.
4012. Failure to give name — assistance.	

First Offense, \$10.00; Second, \$10.00; Third, Court.

3856. Driving left of street car.

First Offense, \$5.00; Second, Court; Third, Court.

4017. Operating without license.

First Offense, \$10.00; Second, Court; Third, Court.

4021. Driving above legal rate of speed.	4036. Non-flexible or anti-skid devices on freight carriers.
4028. Trucks above maximum length and width.	

To Court in First Instance.

Accepting bonus on purchase of supplies or parts.	Excessive weights on vehicles.
Driving when intoxicated.	Freight vehicles — defective tires.
Driving recklessly.	Motor trucks geared for illegal speed.
Operating under age or unfit.	Using vehicle without owner's consent.
Improper tires on tractors.	

regulations are made by one body and where all violations are punished by the Court such a provision can perhaps be made without difficulty. But where some of the regulations are state laws, others are city and town ordinances, others are made by Park Commissioners or by the Street Commissioners of the City of Boston, and others by the Registrar of Motor Vehicles it would be more difficult to make such a provision. Doubtless it could be done. But one thing necessary for success in an administrative enforcement of traffic regulations is that the whole scheme should be simple as well as certain. The Council is of opinion that this consideration is decisive against a classification of the regulations with penalties varying in amounts and for that reason they do not recommend the adoption of it.

The procedure to be pursued when a penalty is absolutely due, that is to say for penalties in the second and third stages, is the same *mutatis mutandis* as that set forth above for violations during the first stage or period in cases where the operator elects not to make a non-committal payment.

To complete the statement of the scheme we have to add the amounts of the non-committal payments and of the penalties which in our opinion ought to be adopted.

They are as follows:

For the first alleged violation the non-committal payment should be \$5 plus the \$3 clerk's fee, and the penalty for which the civil action should be brought in that case if the operator elects to contest the fact of violation should be \$10. plus the costs taxable in similar actions of contract in the district courts and to them should be added a \$6 entry fee.¹

For the second alleged violation the non-committal payment should be \$10 and the penalty should be \$15, to which is to be added the clerk's fee and the costs just stated. For violations in the second period, *i.e.*, after the operator has had the opportunity of making two non-committal payments, the penalties are to be \$20, \$25 and \$30, and for each violation in the third period the penalty is to be \$50 but in this period and in addition to the penalty the operator's license is to be suspended for ten days for the first of these violations (the sixth in all) and for the balance of the license year or for the period of six months, whichever is the longer period of time, in case of the second of these violations being the seventh violation in all.

The trial of the civil actions of contract to collect penalties will be

¹ The entry fee is fixed at \$6 in place of \$3 (the amount of the clerk's fee in case of a non-committal payment) because the work of the clerk's office in bringing the action and after it is brought in connection with it is greater than it is in receiving a non-committal payment.

conducted in behalf of the Commonwealth (in the district courts) by the police officer who reported the violation and in the Superior Court by the district attorneys.

The subject of enforcing traffic regulations is one of recent and current discussion throughout the country.

In the Report of the Joint Special Legislative Committee appointed to investigate and study the various problems relating to the control, supervision and regulation of motor vehicles and kindred matters (Senate Document 285 for the year 1925) it was said at p. 22:

POLICE AND LESSER OFFENCES.

Complaint has reached us from many sources that police officers are spending a great deal of time in the courts of the commonwealth, where their presence is required for the presentation of evidence against those of whom they have complained for violation of the motor vehicle laws or rules. Several officials in charge of police departments, including the Police Commissioner of the city of Boston, have asserted that it is not at all an infrequent occurrence to find one-fourth of the entire street patrolling force detained in court.

This is a condition which should not be permitted to continue, especially when practically every police force in the commonwealth is undermanned. Punishment of offenders is, of course, a necessary corollary of the criminal law, but prevention of crime, and detection of crime, are at least fully as important. It cannot be gainsaid that a police officer is performing his greatest service when, by his presence on his post, he serves as a deterrent to those who, in his absence, might yield to impulse and become lawbreakers.

In Boston, and no doubt in other cities as well, a considerable portion of the traffic squad is obliged to go into court each morning, to present evidence against those who have been summoned for violation of laws or rules. Lack of men prevents adequate replacements, with the result that in many busy sections of the city there are none to direct traffic, even during the hours when it is heaviest.

Another important consideration is the admitted fact that other police officers, particularly those whose tours of duty are performed during the evening, realizing that time spent in court must be taken from the hours ordinarily devoted to sleep or recreation, deliberately refuse to enter complaints for any except the most serious violations of law. Thus offenders are often permitted to escape punishment for lesser offences, and become not only careless, but sometimes contemptuous of the law.

But there is still another reason for abandoning the present system of prosecution if adequate substitute can be found. It seems to us unreasonable that the otherwise law-abiding motorist should be summoned into court for such a minor infraction of the law as having an unlighted rear lamp. This, of course, is an extreme example, but there are several provisions of the statutes violations of which, in certain instances, involve no element of danger to the public. We are convinced that there are many cases of this kind which should never be put before

the courts, nor should the offenders be made to bear the stigma of a criminal record. Frequently they are but innocent victims of circumstances, such as a burned out filament or a lost number plate.

At some risk of repetition the Council thinks it worth while to state what in its opinion will be accomplished by the scheme now recommended by it.

In the first place this scheme will put an end to the practice (which now obtains) of dealing with violations of traffic regulations as crimes and of branding as criminals those who are guilty of them. It makes a distinction between the operator who drives recklessly, under the influence of liquor, or of like offences set forth in G. L., c. 90, §§ 23-24, those set forth in G. L., c. 90, § 10 (operating a motor vehicle not being licensed so to do) and in § 25 (refusing when requested so to do to give name and address to a police officer) on the one hand and on the other hand those operators who are guilty of what in their essence are regulations of traffic merely. In addition it discriminates between (1) the operators who violate a traffic regulation through inadvertence, (2) those who do that through carelessness and (3) the persistent violator of such regulations. While it undertakes to treat fairly the operator whose violation is or may be taken to have come from inadvertence, and with the operator who ought to be taken to have acted through carelessness on the one hand, it undertakes, on the other hand, to deal in a drastic manner with an operator who has shown himself to be a persistent violator of traffic regulations.

In the second place it treats as the most drastic penalty the suspension of the operator's license. It reserves that for the collection of judgments when they are not paid within a reasonable time and for dealing ultimately and adequately with the operator when it has become apparent from his repeated violations that he does not intend to comply with these regulations.

In the third place it creates so far as that is possible an administrative enforcement of traffic regulations and it eliminates (as it must eliminate in creating an administrative enforcement) all discretion, whether it be the discretion of the judge or of other officials. This feature of the scheme has the added beneficial result of eliminating any difference between the administration of the law which is bound to come from the exercise of judicial discretion by the eighty-one justices and the one hundred and fifty-one special justices of the seventy-three district courts and of the thirty-two justices of the Superior Court. Under this scheme there will be no difference in the administration of traffic regulations, no matter where the violation or alleged violation takes place and no matter

what court (whether it be the Superior Court or any one of the seventy-three district courts) disposes of the case. And to some extent an end will be put to the criticism which has in fact taken place in the past in this connection without stopping to inquire how much and how far that criticism was justified.

In the fourth place instead of adding to the burdens now upon the courts it reasonably may be expected to diminish them since (1) the courts themselves will have nothing to do with the non-committal payments and (2) the action to collect the penalty being a civil action the defendant must elect at the outset whether he will go directly to the Superior Court where he will have his constitutional right to a trial by jury on the one hand or on the other hand whether he will abide finally by the decision of the district court.

In the fifth place the civil action for a penalty will be tried but once. It will be tried in the district court or in the Superior Court as the defendant elects and that one trial will be final. The only issue to be tried will be the fact of the violation he is alleged to have committed. If he is adjudged to have committed the violation with which he is charged the matter is at an end except to enter judgment once and for all in the sum specified in the statute. There will be no appeals from decisions of the district courts to get better terms by arrangements with district attorneys through pressure put upon them by persons supposed to have influence or otherwise to *not pros* or place on file or make a trade for better terms in exchange for a plea of guilty.

In the sixth place it reasonably may be expected that persons who are alleged to have committed violations of a traffic regulation will take advantage of the opportunity of disposing of the matter by making non-committal payments and so far as they do so, there will be an end to the police officer's time being taken up in attending court in place of performing his duties as an officer.

And finally, the sense of irritation, resentment and injustice which now obtains because violations of traffic regulations, which in their essence are in no wise and in no respect criminal acts, are treated by the law as the acts of one who has committed a crime, will be removed.

If this scheme for dealing with violations of traffic regulations is adopted some modifications might well be made as to the suspension of the operator's license who has been convicted of a crime in operating a motor vehicle. But that is a matter outside those which we have been asked to consider now.

Provision will have to be made for the appointment of assistant clerks

of some and for giving further clerical assistance in the clerks' offices of other district courts. Possibly it will be found hereafter to be wise to establish branch clerks' offices in towns where there is no court house now, to be in charge of an assistant clerk to deal with payments and the bringing of actions in case payments are not made.

* In the act to carry into effect the recommendations here made we have inserted a provision dealing with violations of parking regulations, and with violations of all kinds by non-residents.

What we have said covers the subject of Senate Document No. 228 and House Document No. 505.

Senate Bill 188 is entitled: "An Act to provide for the More Effective Enforcement of Certain Minor Violations of the Motor Vehicle Laws, and to conserve the Time of the Police in Relation thereto." It provides in Section 2 that: "In case of a violation of any provision of this chapter [G. L., c. 90] the punishment for which is not specifically provided, or of any rule or regulation of the registrar made under authority of section thirty-one, or of a special speed regulation lawfully made under authority of section eighteen, any police officer, investigator or examiner upon taking cognizance of such violation shall forthwith report the same, with the relevant facts, to the registrar, upon forms to be furnished by him. Upon a third or subsequent violation in the same year of section seventeen or of a regulation made under section eighteen, the registrar shall forthwith revoke the license of the person so offending, and no new license shall be issued to such person for at least thirty days after such revocation, nor thereafter except in the discretion of the registrar." By Section 1 it brings within the operation of Section 2 violations of G. L., c. 90, § 15, by striking out the last sentence, which imposes the penalty for a violation of that section. That section provides that: "Every person operating a motor vehicle, upon approaching a railroad crossing at grade, shall reduce the speed of the vehicle to a reasonable and proper rate, and shall proceed cautiously over the crossing."

Senate Bill 188 does not contain a comprehensive plan for dealing with violations of motor vehicle laws of minor importance and with traffic rules and regulations. It deals with violations of some of them but not with violations of all such motor vehicle laws and traffic regulations, and it does not provide for all violations of the motor vehicle laws and traffic regulations with which it deals. In addition the method of administration recommended does not seem to us to be just to the persons who are charged with having committed the violations. It directs the registrar acting upon the reports of the police officer, investigator or examiner,

to revoke an operator's license "upon a third or subsequent violation" of the section or regulation specified without having given the operator a chance to be heard in the matter.

After consideration of this bill the Council advises against the adoption of it.

A draft of an act to carry out the recommendations of the Council will be found in Appendix C, p. 104.

Unsatisfactory Condition of Laws and Regulations as to Operation of Motor Vehicles.

The Joint Special Legislative Committee of 1924 on problems relating to motor vehicles, already referred to, called attention to the unsatisfactory condition of the law under which local regulations were made under several different statutes, one of which dates from 1847. In drafting the act to carry out our recommendations as to motor violations we have drawn it so as to apply to all violations of these local regulations in so far as they relate to motor vehicles, and we believe all such local traffic cases should be thus brought within the act as they constitute a large proportion of the motor cases which congest the courts and take up the time of the police and others whose services are needed for other purposes. But we call attention to the passage from their report on this subject quoted below in a footnote¹ as one deserving the serious consideration of the legislature.

¹ EXTRACT FROM REPORT OF JOINT SPECIAL COMMITTEE UNDER JOINT ORDER OF 1924 (SENATE 285 OF 1925, PP. 18-19).

"Local Regulations.

"Particularly vexatious to motorists are the local regulations adopted by city and town authorities for controlling traffic, especially to those who are accustomed to driving through communities in which they are not acquainted. One who conforms precisely to the requirements of the laws and ordinances in Cambridge, for example, may be arrested if he drives in exactly the same manner in the adjoining town of Arlington. To make matters worse, after a week-end tour, he may be served with a summons to appear in court in some distant part of the state to answer to a charge that he has violated some ordinance, locally adopted, which is directly at variance with the requirement in the place of his residence. Conditions have arisen which are intolerable, and which should not be permitted to continue.

"There are three statutes under which local officials have authority to make regulations for the control of traffic. General Laws, chapter 40, section 22, permits each city or town to make rules or orders 'for the regulation of carriages and vehicles used therein.' General Laws, chapter 85, section 10, gives to towns the right to make ordinances or by-laws regulating the speed for passing of vehicles; and General Laws, chapter 90, section 18, authorizes cities and towns to make ordinances or by-laws governing the operation of motor vehicles.

"The statute first referred to was originally enacted in 1847, and the second, ten years later — both before the coming of the motor vehicle.

"In 1903 the General Court noted the possible need for local regulation of motor vehicles, to supplement the laws of the commonwealth, and enacted the provision above referred to as being found in Chapter 90 of the General Laws, but with a further provision that any

**THE REQUEST OF THE LEGISLATURE FOR A REPORT ON THE
BILLS RELATING TO METHODS OF DEALING WITH CASES
OF PROFESSIONAL MISCONDUCT.**

Chapter 55 of the Resolves of 1926 reads as follows:

Resolved, That the judicial council be requested to investigate the subject matter of current house bill number two hundred and fifteen providing for an official and hence more effective means of accomplishing the disciplinary work heretofore done through the voluntary efforts of bar associations; of current house bill number thirteen hundred and forty-two, relative to removal of attorneys; and of current house bill number fourteen hundred and sixty-two, relative to the professional conduct of attorneys. Said council is hereby further requested to include its conclusions and recommendations relative thereto in its annual report for the current year.

House Bill 215 was originally introduced at the session of the legislature of 1925. It provides in substance that the justices of the Supreme Judicial Court shall appoint in each county a "bar counsel" whose duty it shall be to make a preliminary investigation respecting any complaint of professional misconduct on the part of a member of the bar; and shall appoint also three or more "bar masters" in each county who shall hear such cases as the bar counsel deems it proper to submit to them; that witnesses may be summoned to testify before them and shall be sworn; that the records of all such cases shall be filed with the clerk of courts and shall be public records; that the bar masters shall either (a) dismiss the case, or (b) administer a written censure to the person charged, or (c) report their findings to the Supreme Judicial Court; that any findings so reported shall be conclusive of the facts and after the filing of the same and after such hearing if any as the court shall order the court shall either dismiss the case, censure the person charged or suspend or disbar him; that the bar counsel and masters shall receive compensation at the rate of four dollars an hour.

Section 1 of House Bill 1462 is based on the same idea, but contains some important amendments and some changes of detail. It provides

such local regulation must be approved by state authority, now the registrar of motor vehicles, before becoming effective.

"But several cities and towns have evaded this latter requirement by adopting their ordinances or by-laws under authority of one or the other of the earlier enactments. This they have accomplished by omitting specific reference to 'motor vehicles,' and phrasing their local regulations in words which appear to apply to all 'vehicles' although in practical operation they apply solely to self-propelled vehicles.

"We recommend that every local regulation, adopted under any one of the statutes above referred to, shall become operative only when it has been approved by the motor traffic board recommended elsewhere in this report; and that the board be given authority to make rules and regulations governing the use of signs and signals which direct or purport to direct traffic, including any and all signal lights."

that the commonwealth shall be divided into three districts, one of which shall comprise only the county of Suffolk and that the justices of the Supreme Judicial Court shall appoint in each district not less than nine members of the bar to constitute the "committee of inquiry of the bar," and another to act as secretary. The functions of the committee and of the secretary are the same as those of the bar masters and counsel provided for in House Bill 215, but the secretary alone is to receive compensation. It is provided that if after hearing a case the committee believe that it calls for consideration by the court they shall report their findings to the court, with a transcript of the evidence and their recommendation as to the disposition which shall be made of the case, and that the report shall "be given the weight which is given by a court of equity to a master's report accompanied by a report of the evidence," and that after a hearing the court shall enter such order as seems proper. There is also a provision that if the committee believe that the case does not call for consideration by the court, they shall nevertheless report their findings and recommendations to the court if the complainant so requests.

While disbarment petitions may now be filed in either the Supreme Judicial Court or the Superior Court, both of these bills would limit the jurisdiction to the former court. We believe it is advisable that all this jurisdiction relative to the disbarment, suspension, or censure of attorneys-at-law should be confined to the Supreme Judicial Court because that is the court in which it is the practice to admit attorneys and administer to them their oath of office. Because of this and of the fact that it is the highest court in the Commonwealth, we believe that the bar generally, including any members who may be subjected to discipline, will have a stronger sense of professional respect for standards of conduct as maintained by that court with the assistance of the Committees of Inquiry of the Bar, which are proposed, than if the jurisdiction and consequent judicial responsibility in cases of this peculiar character is distributed between the Supreme Judicial Court and the Superior Court. As any hearing before a justice of the Supreme Judicial Court would be upon the report of the Committee of Inquiry and the transcript of the evidence as in the case of an equity appeal from the Superior Court, we do not feel that this provision will add greatly to the burdens of the Supreme Judicial Court. At all events, we think this matter of sufficient importance to provide that removal, suspension, and censure of attorneys-at-law should be dealt with in the court which admitted the attorneys and administered the oath.

Section 2 of House Bill 1462 amends section 41 of chapter 221 of the General Laws so that the penalties now provided for one who undertakes

to practice law after being disbarred shall be applicable to one who practices while suspended from the bar.

House Bill 1342 would change the existing law only in that it proposes to limit to bar associations the right to file petitions for disbarment.

We have carefully considered all of these bills.

House Bill 215 and section 1 of House Bill 1462 present interesting plans for providing official agencies for the more effective performance of the duties now performed by the grievance committees of bar associations. If either plan is to be adopted it is our opinion that section 1 of House Bill 1462 is in substance much to be preferred to House Bill 215. The division of the Commonwealth into three districts seems decidedly better than the setting up of each county as a unit. The title of "bar masters" is open to objection. Whatever the committee is called its members should serve without compensation, and their report of findings should not be conclusive but, in view of the importance of the issue to be determined, should be subject to revision by the court in the light of the transcript of the evidence. The attorney complained of should have an absolute right to a hearing in court upon the report and the evidence. All these matters are satisfactorily covered in section 1 of House Bill 1462.

Hitherto cases of professional misconduct have been in the main dealt with in the first instance by grievance committees of the different county bar associations, and the Massachusetts Bar Association. While it has been open to any individual to file a disbarment petition in court without any prior application to a grievance committee this has been rarely done, and the ordinary method has been to file a complaint with the grievance committee and to proceed to a hearing before the committee. If after a hearing the committee has deemed the case to be a proper one for submission to the court, and this decision has been approved by the executive board of the bar association, a petition has been filed in either the Supreme Judicial Court or the Superior Court by the bar association, and the case has been tried *de novo* in court.

While grievance committees of the bar associations have done much excellent work there have been obvious disadvantages in this method of dealing with cases of professional misconduct. The committees have had no official standing and have had no power to summon witnesses or administer oaths. Their report has not been submitted to the court nor have their findings been admissible in evidence, and it has been necessary to try the case over again, the complaining bar association being represented by counsel named, after 1919 and until 1924, by the attorney-general, and, since the passage of Chapter 134 of the Acts of 1924, by the

court, the counsel being upon his appointment ordinarily wholly unfamiliar with the case and with the proceedings before the committee. This has been an inefficient method of procedure. In the smaller counties where the members of the bar are well known to each other, there have been obvious difficulties in the way of enforcing bar discipline.

It seems to us that the proposed legislation will accomplish several desirable results. In place of the voluntary, unofficial agencies which now undertake the work of investigating complaints there will be substituted an official board representing the court, with power to summon witnesses and administer oaths.¹ As in the case of suits in equity tried before a master a retrial of the case in court is avoided, time of the court is saved and the whole proceeding made much more expeditious and effective without affecting the substantial rights of the respondent. The division of the state outside of Suffolk County into two large districts does away with the difficulties above referred to which exist in the smaller counties.

We are led by these considerations to recommend the passage of a bill (a draft of which is printed in Appendix C, p. 108) containing the substance of section 1 of House Bill 1462, with certain changes of detail. We suggest that the committees consist of seven members, rather than "not less than nine;" that their duties should be described as "to hear complaints against attorneys" rather than to "receive complaints" and "make preliminary investigations," as that should be the duty of the secretaries; and that they should be empowered, if they feel that the case does not warrant submission to the court but that the attorney complained of should be censured, to administer such censure. We feel also that the records of all cases should be kept in the custody of the secretary and should be available for all proper uses but should not be public records.

It has further seemed to us that a provision might well be inserted in the bill with respect to the petitions of disbarred attorneys for reinstatement, providing that such petitions shall be filed in the Supreme Judicial Court and may be referred by the court to the proper committee of inquiry for hearing and report.

Section 2 of House Bill 1462 embodies an amendment of the existing law which seems to be plainly desirable.

With respect to House Bill 1342 which would change the existing law merely by providing that orders of disbarment may be made "upon petition of the bar association in the county," we do not recommend its

¹ As to the nature of disciplinary proceedings, see the Casey Case, 211 Mass.

passage. While in the past disbarment petitions have ordinarily been filed by bar associations they have sometimes been filed by individuals. We think it unwise for the legislature to undertake to restrict the agencies by which such proceedings may be instituted. We do feel, however, that as a part of the proposed new legislation discussed above it should be provided that whenever a petition for disbarment is filed in court without any hearing before the committee of inquiry it should be referred as a matter of course to the committee and that until the committee reports the papers should be impounded. This point is covered in the bill which we have drafted.

SITTINGS OF THE SUPERIOR COURT

When the Superior Court was established in 1859 the statute creating it contained a section (St. 1859, c. 196, § 7) fixing the times and places in the fourteen counties of the Commonwealth where the sittings of the court were to be held. In this regard the act followed the course of legislation theretofore adopted in similar cases and the same course of legislation has been followed down to the present time. To meet new conditions and local demands made without due regard to the scheme as a whole very many changes have been made from time to time in the schedule of times and places established in the original act. But the main framework of the statute which fixes today the times and places of the sittings of the Superior Court (G. L., c. 212, § 14, amended by St. 1921, c. 327) is that brought into being by the original act of 1859 establishing the Superior Court.

As conditions change (and conditions do change) on which the convenience of the public, the convenience of the judges and that of the bar depend, changes have to be made in any schedule which is adopted by the Legislature. And what is perhaps more frequently the case, changes have to be made in the duration of the several sittings, so that the scheme of the sittings as a whole may be arranged to meet the conditions of the day.

The Superior Court today is a court consisting of thirty-two judges and a court which tries in one year more than 7,500 cases. In the year ending June 30, 1926, it tried 7,568. It is not possible to establish a fixed system of times for holding the sittings of such a court in the fourteen different counties which will not have to be changed here and there from time to time to meet the changing conditions which we have just spoken of. It is not only true in theory but it has been found to be true in fact that a good administration of the work of the court cannot be obtained

without making some changes in the schedule of sittings when they are established by a statute.

Some changes ought to be made at the present time. In place of recommending statutory changes which should be made in the present schedule of the times and places now established for holding sittings of the Superior Court, the Judicial Council is of opinion that a change in the method of making up that schedule ought to be adopted, *leaving untouched the places where the sittings of the court are to be held set forth in the present statutes.* We are of opinion that the whole matter should be left to be settled from time to time by the chief justice of the court.

In recommending this change the Council is carrying out the underlying principle on which the statute was based, by which it was provided that the chief justice of the Superior Court should "from time to time make such assignments for the attendance of a justice at the several times and places appointed for holding the court as will be most convenient and as will insure the prompt performance of its duties." St. 1910, c. 555, § 1, now G. L., c. 212, § 2.

Of course, the public ought to be assured that they will have an opportunity of presenting their cases in court, and of the times and places when and where that opportunity will be given to them. For that purpose the plan which the Council now recommends requires the posting of the schedule, made up by the chief justice in the clerks' offices throughout the Commonwealth by November 15, before the first day of the ensuing January when it is to take effect, and that any changes in the schedule so established made in subsequent years shall be posted in the same way.

In making this recommendation the Council proceeds upon the theory that the court should be administered on the same principles as those on which business of importance is carried on in the community. In other words, that the responsibility for conducting the courts as they should be administered ought to be put upon the chief justice; that he should be given the necessary power and be held responsible for the due administration of the duties of his court. We are of opinion that the results so obtained will be better for the convenience of the bar and will be appreciated by them.

For these reasons we recommend the adoption of the act which will be found in Appendix C, p. 111.

THE METHOD OF STATING EVIDENCE IN BILLS OF EXCEPTIONS

By G. L., c. 231, § 113, it is required that exceptions "shall be reduced to writing in a summary manner." A bill of exceptions which states much of the testimony in the form of question and answer is subject to severe criticism by the court and the exceptions may even be dismissed on motion. See *Cornell-Andrews Smelting Co. v. Boston & Providence Railroad Corp.*, 215 Mass. 381, 387; *Taylor v. Pierce Brothers Ltd.*, 219 Mass. 187; *Commonwealth v. L&course*, Mass. Adv. Sh. (1926), p. 1861.

The present method of stating the evidence in narrative form is, however, extremely unsatisfactory, especially where the evidence is voluminous and the exceptions are many. A vast amount of time is apt to be consumed by counsel in coming to an agreement with respect to the narrative statement, and, as a result, the expense to the client often exceeds by far the cost of printing the testimony as taken by the stenographer. The picture presented by the narrative form of statement is apt to be inaccurate and misleading. The length of time between the date of the verdict and the entry of the case in the Supreme Judicial Court is often made unwarrantably long. We believe that the practice in this regard should be changed.

The Judicature Commission in its report of 1921 (p. 70) recommended that "the excepting party be required (unless the parties agree otherwise) to reduce the questions and answers in the order found in the stenographic minutes of the trial to a narrative form, omitting therefrom nothing except by agreement of parties and approval of the court." It seems to us that this would result in but little improvement over present methods, and that it is decidedly objectionable as tending to perpetuate the statement in narrative form.

While it is likely that many judges feel that the submission of the material evidence in question and answer form would involve them in more labor, others take a different view. A federal judge who is a member of one of the busiest of the circuit courts of appeals has recently stated that he much prefers to read evidence in question and answer form; that he finds it extremely difficult to read understandingly a long statement of testimony reduced to narrative form, whereas he can read very rapidly and easily a transcript of the testimony in the words in which it was given. A judge of experience on an appellate court in another state has said, as reported to us, "that he did not think that a judge ever got the true spirit of a case unless he could read what the witness testified to, rather than what the lawyers said the testimony was."

The ultimate question after all must be as to the best method of securing justice for the litigants at the least practicable expense.

In our opinion the excepting party should be allowed to include in his bill of exceptions a transcript of the testimony exactly as given, omitting such portions as both parties agree are immaterial, or as the trial court directs to be omitted; but if for some special reason the excepting party prefers to state the testimony in narrative form the trial court should have power to permit him to do so.

The prevailing practice in other states appears to be to print the evidence in the form of question and answer. We have recently directed inquiries to eleven states in regard to this matter and the information we have obtained may be summarized as follows:

In only two of these states, namely, Maryland and Missouri, does the record ordinarily contain the evidence in narrative form. In Maryland the rule of the Court of Appeals requires that the evidence shall be condensed as far as practicable, and that where the narrative form can be used the evidence shall be stated in that form, but a great deal of latitude is allowed and it frequently happens that the testimony, or at least a large portion of it, is inserted in the bill of exceptions in the original question and answer form.

In Missouri the appealing party prepares an abstract of the evidence for the record. The respondent, if not satisfied with this, may file a supplemental abstract. If any controversy remains the appellate court obtains from the court below a typewritten transcript of the testimony.

In Minnesota the material testimony may be printed in narrative form, but a transcript of the actual testimony is always on file in the court; and the prevailing practice is to print the testimony in the record in question and answer form.

In California cases go up either on a bill of exceptions or by what is known as the "alternative method." The latter is more commonly used and includes the testimony as taken by the stenographer. In bills of exception the practice is to reduce the testimony to narrative form so far as possible.

In the remaining states to which we wrote the testimony goes up in question and answer form. These states are Maine, New York, Pennsylvania, Illinois, Kentucky, Louisiana and Colorado. We are informed by the person to whom we wrote in New York that formerly the practice there was to print the evidence in narrative form but that "the change has been generally satisfactory to the bar, inasmuch as the case on appeal now gives a much better picture of what actually happened in the court room than was ever given by the narrative form."

We do not overlook the fact that the new rules of the Supreme Court of the United States provide that the evidence shall be stated in the record in condensed form (Equity Rule 75; Revised Rules, adopted June 8, 1925, rule 7). But the equity rule provides that "if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness" and rule 7 of the revised rules permits a statement in question and answer form if "a proper understanding of the questions presented" requires it.

It is true that in many cases the material evidence can be very briefly stated, and it is often not at all difficult to put the substance of it in narrative form. While we think that the general practice should be to print the material evidence just as it was taken, we would give the excepting party the option of preparing a narrative statement if he believes that it can be readily done and at less expense to his client, but we think that if the other party objects permission should be granted by the trial judge only after a hearing.

To carry into effect our recommendation we submit the following bill:

Be it enacted, etc., as follows:

SECTION 1. Section one hundred and thirteen of chapter two hundred and thirty-one of the General Laws is hereby amended by striking out in the seventh line thereof the words "in a summary manner."

SECTION 2. Chapter two hundred and thirty-one of the General Laws is hereby further amended by inserting after section one hundred and thirteen thereof a new section, as follows:

Section 113A. Bills of exceptions shall contain a transcript of the evidence omitting such portions thereof only as the parties agree in writing, or, in the event of their disagreement, as the court in which the exceptions were taken determines, not to be material; provided, however, that the court in which the exceptions were taken may direct any portion of the evidence to be included although the parties may have agreed that it was not material and provided further that if the parties agree or if the court in which the exceptions were taken orders, the evidence may in whole or in part be stated in summary form, but such order shall be made by the court only upon motion of the excepting party and after a hearing.

THE FORMS OF WRITS AND SUMMONSES.

There are decided objections to the forms of original writs and summonses now in use in Massachusetts which follow the forms set out in St. 1784, c. 28. The document served on the defendant, whether it be a separate summons or a copy of the writ, directs him in terms to appear before the court on the return day which is, of course, just what he is not expected to do. He is neither informed that the word "appear"

does not bear its natural meaning, nor that he has a certain length of time *after* the return day in which to obey the directions of the summons or writ. - This causes much inconvenience, not only to defendants but also to clerks of courts, as parties served with process are constantly appearing in court on the day named in the paper served on them, only to be told that the paper does not mean what it says. This is especially true in the district courts where poor persons, without legal advice, are often caused loss of time and money by coming to court when they are not wanted. The subpoena in equity, in its present form, is open to the same objections.

An attempt has been made in a few courts to obviate the difficulty by printing somewhere on the writ or summons a statement as to what is really required. The administrative committee of the district courts has recently recommended that something of this sort be done with respect to all writs and summonses in district courts.

Furthermore the form of summons now used where the writ is one of summons and attachment recites that an attachment has been made whether there has really been one or not, and misinformation is thus being constantly given to defendants, officially and under the forms of law.

The trustee writ is open to similar objections and in addition it recites that the defendant "has not in his own hands or possession goods and estate to the value of [the *ad damnum*] which can be come at to be attached," which may or may not be true and is wholly superfluous.

We believe that the forms of writs and summonses in use should be changed so that they will tell the defendant intelligibly what he really must do and not contain misstatements. Our recommendation as to the form which these papers should take is made in the light of a report made to us by one of our number with reference to the forms in use in many other states of this country as well as in England and Canada.

G. L., c. 223, § 16, reads as follows:

Actions at law, unless founded on *scire facias* or other special writs, or unless otherwise authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed and bear teste as required by the constitution, and shall be framed, either to summon the defendant, with or without an order to attach his goods or estate, or to attach his goods or estate and, for want thereof, to take his body; or, in an action commenced by trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee. Original writs shall be in the form heretofore established by law and by the usage and practice of the courts. If changes in their form are necessary in order to adapt them to changes in the law, or for any other sufficient reason, the courts may make such changes, subject to the final control of the supreme judicial court, which may by general rule regulate such changes in all the courts.

The writ of *capias* and attachment seems unnecessary. It is almost always used as a writ of summons and attachment, the direction to take the body of the defendant being crossed out. A simple form of *capias* writ can be provided for the rare cases where an arrest is to be made. The other common forms of original writs are writs of summons, or of summons and attachment, and trustee writs. Service of these is by copy, except in the case of the writ of summons and attachment, service of which is by separate summons. We recommend, as stated below, that the fiction of the attachment of a chip be abolished, and that the defendant be informed that an attachment has been made only when this is in fact true.

To carry out these suggestions we recommend in the first place that G. L., c. 223, § 16, be amended to read as follows:

Actions at law, unless founded on *scire facias* or other special writs, or unless otherwise authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed, and bear teste as required by the constitution, and shall be framed either to summon the defendant, with or without an order to attach his goods or estate, or to take his body; or, in an action commenced by trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee. Until changed by the courts original writs and special precepts under section eighty-six shall be in the form heretofore established by law and by the usage and practice of the courts. The courts may, for any reasons deemed by them to be sufficient, make changes in the forms of writs or precepts from time to time, subject to the final control of the supreme judicial court.

If this amendment is made section 86 should be amended so that the first sentence will read as follows:

A precept for such arrest or attachment shall be in the same form, so far as practicable, as an original writ of *capias* or of summons and attachment.

No changes in the statutes relating to service of process will be required.

We suggest that the following forms be adopted for use in the Superior Court and that similar forms be adopted for use in the municipal and district courts. Similar changes will have to be made in writs not included below, such as writs of entry and *replevin*.

The writ of summons will be identical with the writ of summons and attachment, with the omission of the direction to attach. The writ of summons and attachment may be used although no attachment is in fact made, provided the defendant is not notified by the summons that there has been an attachment.

(Proposed New Form of Writ of Summons and Attachment.)

COMMONWEALTH OF MASSACHUSETTS.

, ss.

To the Sheriffs of our Several Counties or their Deputies,

. GREETING:

WE COMMAND you to summon
 of within our County of
 to cause a written appearance to be entered by him or his attorney in his behalf
 in the office of the clerk of the Superior Court for said county at
 within days after the first Monday of next;
 in order that he may make answer in our said court unto
 of in our county of
 in an action of to the damage of the said
 (as he says) the sum of
 Dollars which shall be made to appear.

And have you there this writ with your doings therein.

AND WE COMMAND you to attach the goods or estate of the defendant to the value of the aforesaid sum.¹

Witness, Esquire, at Boston, the
 day of in the year of our Lord one thousand nine
 hundred and twenty

(Proposed New Form of Summons.)

COMMONWEALTH OF MASSACHUSETTS.

, ss.

To

 of within our County of
 GREETING:

WE COMMAND you that within days after the first Monday of
 next you or your attorney do file a written
 appearance in the office of the Clerk of the Superior Court for said County
 of in order that you may make answer unto of
 in an action of which he has brought against you claiming damages
 in the sum of Dollars.

And take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given against you.

Witness, Esquire, at
 the day of in the year of our
 Lord one thousand nine hundred and twenty

Clerk.

¹ Cross out these words if no attachment is to be made.

(Proposed New Form of Trustee Writ.)

COMMONWEALTH OF MASSACHUSETTS.

, ss.

To the Sheriffs of our Several Counties or their Deputies,

GREETING:

WE COMMAND you to summon.....
of.....within our County of.....
to cause a written appearance to be entered by him or his attorney in his behalf
in the office of the clerk of the Superior Court for said county of.....
at.....within.....days after the first Monday of
.....next; in order that he may make answer in our said court
unto.....of.....in an action of.....
.....to the damage of the said.....
(as he says) the sum of.....Dollars
which shall be made to appear.

AND WE COMMAND you to attach the goods or estate of said defendant in his
own hands and possession to the value of said sum.¹

And whereas the said defendant has intrusted to and deposited in the hands
and possession of.....of.....in
said county of.....trustee of the said defendant, goods,
effects and credits to the said value: WE COMMAND you, therefore, that you sum-
mon the said trustee (if he may be found in your precinct) to cause an appearance
to be entered in his behalf at the place and time as aforesaid that he may show
cause, if any he have, why execution to be issued upon such judgment as the said
Plaintiff may recover against the said Defendant in this action (if any) should not
issue against.....goods, effects or credits in the hands and
possession of the said Trustee.

And have you there this writ with your doings therein.

Witness.....Esquire, at....., the
.....day of.....in the year of our Lord one
thousand nine hundred and twenty.....

We suggest further that rule 1 of the equity rules of the Supreme
Judicial Court and the Superior Court be amended so as to provide that
the form of the subpoena shall be as follows:

(Proposed New Form of Subpoena in Equity.)

COMMONWEALTH OF MASSACHUSETTS.

, ss.

To.....of
.....GREETING:

We command you that within.....days after the first Monday
of.....next you do cause a written appearance to be entered

¹ Cross out these words if no attachment other than by trustee process is to be made.

for you in the office of the Clerk of the.....
 Court at.....in said County, in order that you may make
 answer to a bill of complaint exhibited against you in our said court by.....
 of.....and to do and receive what our said court shall
 then and there consider in that behalf. Hereof fail not, under the pains and
 penalties of the law in that behalf provided.

Witness,.....Esquire, the.....
 day of.....in the year of our Lord one thousand nine
 hundred and twenty.....

.....
 Clerk.

It would seem advisable to make a change of the same nature in the
 form of notice used by the Land Court in connection with petitions for
 the registration of title. As the form of notice now in use is prescribed
 by statute, action by the legislature will be necessary. We recommend
 that Section 38 of Chapter 185 of the General Laws be amended by striking
 out the form of notice therein provided, and substituting the following:

COMMONWEALTH OF MASSACHUSETTS.

LAND COURT.

*To (here insert the names of all persons known to have an adverse interest and the
 adjoining owners and occupants so far as known) and to all whom it may con-
 cern:*

Whereas a petition has been presented to said Court by (name or names and
 address in full) to register and confirm his (or their) title in the following described
 land (insert description).

If you desire to make any objection or defense to said petition you or your
 attorney must file a written appearance and an answer under oath setting forth
 clearly and specifically your objections or defense to each part of said petition in
 the office of the recorder of said Court at the Court House in Boston (or in the
 office of the assistant recorder of said Court at the Registry of Deeds at.....
 in the County of.....where a copy of the plan filed with said petition is de-
 posited) on or before the.....day of.....next. Unless an appearance is
 so filed by or for you, your default will be recorded, the said petition will be taken
 as confessed, and you will be forever barred from contesting said petition or any
 decree entered thereon.

Witness,....., Judge of said Court, this.....
 day of.....in the year nineteen hundred and.....

Attest with the Seal of said Court

.....
 Recorder.

THE PRACTICE OF NOMINAL OR "CHIP" ATTACHMENTS.

The practice briefly referred to, in the foregoing discussion of writs, of making a nominal or "chip" attachment on a writ of summons and attachment before serving the summons on the defendant dates back for a century or more and probably to the act of 1784, in which the form of writs was set out. Obviously the reason the practice grew up was that since the form of writ of summons and attachment ordered the sheriff to attach first and summon afterwards, and the sheriff could not change the form of the writ, but was expected to obey its command and to get the summons served on the defendant in order to notify him of the suit and thus give the court jurisdiction, he had to do something, if he found no property to attach, or was not ordered by the plaintiff's lawyer to make an actual attachment. Accordingly, somebody invented the convenient fiction of "attaching a chip as the property of the defendant" and then serving the defendant with the summons, which contains the statement to the defendant over the clerk's signature that: "Your goods or estate have been attached to the value of . ." (See *Peabody v. Hamilton*, 106 Mass. 217; *Colby's Practice*, published in 1848, 109; *Howe's Practice*, published in 1834, 61). If the forms of writs are to be revised, as we believe they should be, to notify a defendant correctly as to what has been done and what he should do, this absurd and unnecessary fiction should be abolished at the same time and if there has been no real attachment in fact the summons should be silent on the subject; whereas, if an attachment has been made, the sheriff as part of his duties in serving the summons should write upon it a notice to the defendant that his property is attached. The sheriff or other officer serving the writ is the proper person to do this because he is the person who knows the fact. He has to write out the fact on the back of the writ when he returns it to court if he has made an attachment and it is just as easy for him to write that fact on the summons before he hands it to the defendant as it is for him to write it on the writ when he returns it to the court.

Accordingly, we recommend that § 17 of c. 223 of the G. L. be amended by adding at the end thereof the following:

Nominal, fictitious, or "chip" attachments shall no longer be made by officers in the service of a writ of summons and attachment. If the officer does not in fact make an attachment, he shall cross out in the form of separate summons now in use the words "And your goods or estate are attached to the value of dollars for security to satisfy the judgment which the said plaintiff may recover upon the aforesaid trial" or other words reciting the fact of attachment when no attachment has been made; and he shall state in his return either that he found

no property of the defendant to attach or that he was not directed by the plaintiff or his attorney to make an actual attachment, and such statement in the return shall be a sufficient compliance with the command in the writ to make an attachment. In case of the adoption by the courts under section sixteen of this chapter of a new form of summons which contains no reference to attachment, the officer serving such summons after an actual attachment has been made shall, as part of his duty, write or stamp upon the summons over his signature as such officer at the bottom of the face of the summons the words, "Your goods or estate are attached to the value of the sum claimed in this summons," or words to that effect, and the officer's return to the court upon the writ in such a case shall state the fact that he notified the defendant in writing of the attachment.

We have already recommended that the form of summons used in such cases should omit all reference to attachment from the body of the summons but in order to bridge the gap until that is provided for, this proposed statute affords a method of correcting the present form of summons so that it will not misinform the defendant.

SEPARATION OF DEBT COLLECTING FROM CONTROVERSIAL LITIGATION.

In our report of a year ago (p. 32) we called attention to the desirability of legislation to expedite the final disposition of actions brought to collect debts, having in mind the propriety of treating such actions differently from controversial litigation. We referred to the English practice whereby, in an action to recover a debt or other liquidated demand, the plaintiff may at once file an affidavit verifying the cause of action and stating that in his belief there is no defense and apply for an order to enter a summary judgment for the amount of the claim with interest and costs; whereupon the defendant must at once by affidavit or otherwise satisfy the master that he is entitled to defend, upon pain of having judgment entered forthwith against him. The effect of this procedure not only in hastening the collection of just claims but in relieving the dockets of the courts, is thus described by Professor Sunderland:

The immense value of the practice is indicated by its wide use. In the year 1923, for example, there were 6,773 summary judgments rendered by the masters of the King's Bench Division as compared with 1,546 judgments entered by the judges after trial of issues. That means that by this device the trial dockets were relieved of 80 per cent of the cases which would otherwise have come before the courts for formal trial, and the claimants in all those cases got their judgments in as many days as it would have required months through ordinary litigation in the courts. (First Report, Appendix A, p. 81.)

The affidavit of no defense, as known in our Massachusetts practice, comes very far indeed from satisfying the need. As was pointed out in

our report, "We need some method of checking the use of the right to a jury trial to obtain delay." We recommended the passage of a statute providing that in actions of contract to recover a debt or other liquidated demand the plaintiff may, on filing an affidavit verifying the cause of action and stating his belief that no defense exists, move for the immediate entry of judgment, and that the court may after a hearing, unless the defendant shows that he has a good defense or discloses facts deemed sufficient to entitle him to defend, enter a conditional order for summary judgment unless trial is demanded within seven days; and that if the defendant insists upon trial the case shall be advanced, and if the defense is not successful the defendant shall pay the plaintiff's reasonable expenses including counsel fees.

We reaffirm our opinion that legislation of this character should be enacted and that it affords one of the best methods of relieving the congestion which now exists in the dockets of our civil courts. We believe, however, that the legislation should go further than the proposed act which we drafted a year ago.

While the constitutional right to a jury trial sets a limit to the power of the legislature it seems clear that the right does not exist unless the court can be satisfied that there is a real issue of fact to be tried.

In the state of New York there is in effect a rule substantially identical with the English rule. It provides that in actions of the kind under discussion the court may upon the filing of an affidavit by the plaintiff enter judgment on motion "unless the defendant by affidavit, or other proof shall show such facts as may be deemed, by the judge hearing the motion, sufficient to entitle him to defend." (Rule 113 of the Rules of Civil Practice.)

The constitutionality of this rule was sustained in *General Investment Company v. Interborough Rapid Transit Company*, 235 N. Y. 133, where the court said (at pp. 142-143):

The argument that rule 113 infringes upon the right of trial by jury guaranteed by the Constitution cannot be sustained. The rule in question is simply one regulating and prescribing procedure, whereby the court may summarily determine whether or not a *bona fide* issue exists between the parties to the action. A determination by the court that such issue is presented requires the denial of an application for summary judgment and trial of the issue by jury at the election of either party. On the other hand, if the pleadings and affidavits of plaintiff disclose that no defense exists to the cause of action, and a defendant, as in the instant case, fails to controvert such evidence and establish by affidavit or proof that it has a real defense and should be permitted to defend, the court may determine that no issue triable by jury exists between the parties and grant a summary judgment.

A similar rule was enacted by the legislature of New Jersey in 1912 (Laws of 1912, c. 231, schedule A, IV).

In *Farnham v. Lenox Motor Car Company*, 229 Mass. 478, in which the court considered the rule of the Superior Court authorizing the entry of judgment in accordance with the report of an auditor unless cause is shown to the contrary Rugg, C.J., said (p. 482) that there is a constitutional right to a jury trial if "there is a real issue of fact to be tried" and went on to say:

Great preponderance of the apparent weight of testimony will not warrant a denial of trial by jury provided there is seemingly enough to require a submission of the case to the jury under the familiar principles. . . .

Doubtless it would be within the province of the court under the rule to require the parties to state the substance of the evidence which each expected to offer at the trial, and to ascertain whether there was upon such statement any disputed question of fact or any fact to be found either directly or by inference; and also in appropriate instances to frame questions, answers to which would settle such disputed fact or facts. Of course great care must be exercised in the use of this power and the fullest opportunity given to parties to make a complete statement with the knowledge that it is to be made the basis of a ruling of law upon the rights of the parties. But there is no fundamental objection to a ruling of law made upon a fair statement of what the evidence is expected to be.

It is plain that it would be within the constitutional power of the Legislature to provide that in an action to recover a debt, where the plaintiff by affidavit verifies his cause of action and asserts that there is no defense, the defendant must do more than merely claim a trial by jury to become entitled to a jury trial and that he must by affidavit or otherwise satisfy the court that there is a bona fide dispute involving a substantial question of fact, the decision of which in his favor would establish a defense. We are led by these considerations to go further than we did a year ago and to recommend legislation providing for the entry of judgment forthwith if the defendant fails to satisfy the court that there is a real question of fact to be tried, and that the plan recommended a year ago should apply to cases where it cannot be found that there is no right to a jury trial but where the case appears to the court to be such that there is in fact no meritorious defense.

The act which we suggest would be inserted in Chapter 231 of the General Laws, as section 59B, and reads as follows:

In all actions of contract where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant the plaintiff may, at any time after the defendant has appeared, on affidavit made by himself or by any other person who can swear to the facts of his own knowledge, verifying the cause of action and stating that in his belief there is no defense thereto, move for the immediate

entry of judgment for the amount of the debt or other demand, together with interest if any is claimed. The motion may be set down for hearing upon four days' notice and after hearing the court may, unless the defendant by affidavit, by his own evidence, or otherwise, shall show to the satisfaction of the court that there is a substantial question of fact in dispute, enter an order for judgment for the amount of the debt or other demand, with interest if any is due and costs, and such judgment shall be entered forthwith; and if the defendant shows that there is a fact in dispute sufficient to entitle him to a trial but fails to satisfy the court that he has in reality a defense to the action or fails to disclose such facts as in the opinion of the court justly entitle him to defend the court may similarly order an entry of judgment for the amount of the debt or other demand with interest if any is due and costs; but in such case judgment shall not be entered until the expiration of seven days from the order and shall then be entered unless the defendant in the meanwhile files a demand for a trial; and if such demand is filed the court may order the case advanced for speedy hearing and, whether the case is so advanced or not, if at the trial the plaintiff recovers an amount not less than that named in the order costs shall be taxed against the defendant in an amount sufficient to cover the reasonable expenses of the plaintiff, including counsel fees incurred after the filing of the demand for a trial, such costs to be taxed after summary hearing by the justice presiding at the trial or, if he is unable to hear the matter, by any other justice of the court. If the plaintiff recovers an amount less than that named in the order, or if the defendant prevails, costs shall be taxed as in ordinary cases, but the court may in its discretion increase the amount by an allowance on account of expenses of either party as may be deemed just.

FEES IN THE SUPERIOR AND SUPREME JUDICIAL COURTS.

In their First Report the Judicial Council called attention to the fact that there is too much litigation in the Courts of the Commonwealth and suggested that if justice were done by requiring substantial costs between party and party the amount of it would be decreased.

The truth of this statement has received a striking confirmation since then by the number of cases in the Superior Court which were dismissed for want of prosecution under Rule or General Order in the year ending June 30, 1926.

The number thus dismissed was 9,257, of which 2,864 were actions at law, 4,935 were suits in equity and 1,458 were libels for divorce.¹ Of course some of these 9,257 cases were settled out of court and the parties to them did not take the trouble to dispose of the cases by proper entries on the record of the case. But 9,257 cases dismissed for want of prosecution means that there was a great deal of litigation which never ought to have been brought even if some of them were real cases settled out of court

¹ These are the number of cases dismissed in all the counties of the Commonwealth except in the County of Dukes County. No return has been received from the clerk of that county.

and finally dismissed for want of prosecution because no entry on the record had been made pursuant to the settlement.

While it is true, as we said a year ago, that the substantial costs between party and party would diminish the volume of litigation there is another policy which will have that effect if adopted by the Legislature. This other policy will give relief to the general taxpayer. Today too much of the burden of maintaining the courts is put upon the general taxpayer and not enough upon the litigants who by resorting to the courts derive a special benefit from their existence and maintenance. How far the expense of maintaining the courts ought to be paid for by those members of the public who resort to them need not be considered now. It is at least just that the fees for the services rendered in the clerks' offices of the courts should be paid by those who derive a special benefit from their maintenance, leaving upon the general taxpayer the much greater burden of the erection of the court houses, the maintenance of them, the salaries of the judges, of the court officers, the payment of jurors and all other expenses incidental to maintaining the courts.

It is not necessary to argue the propriety of adopting the policy of going as far as this. The Legislature has already adopted it in case of the Land Court, and to some extent in case of the Probate Courts as will appear later on.

Originally the fees paid to the clerks of courts were the compensation and the only compensation which they received for their services. By a gradual change of policy (which culminated in 1888 in an entire change of it) the amount to be paid by litigants for the services rendered in the offices of the clerks of courts became and has since then remained a matter in which no one was personally interested. Whether it was for that reason or not, the matter of these fees became and has remained one to which no attention since then has been paid.

From 1795 (St. 1795, c. 41, § 1) and earlier until the year 1830 the compensation and the only compensation which clerks of courts received for their services were the fees which it was provided by statute had to be paid to them for what was done in the clerk's offices at different stages of the cases in the court.

By St. 1830, c. 129, the amount of the salaries of the clerks of courts was established for the first time. But it was provided in that act that for their services (not including the services of assistant clerks and of persons employed to render clerical assistance) they were to retain the fees received unless there was an excess in the amount of the fees received over the salaries thus established and in case there was such an excess, one-half of it was to be retained by them for further compensation and

the other half of it was to be paid to the county treasurer. In case there was a deficit they were allowed to retain the fees received and that was to be in full for their compensation for the year in question.¹

With the single modification that the amount of the deficit (if there was a deficit) was to be paid to the clerk of courts by the county treasurer (see St. 1867, c. 295, § 3, and St. 1874, c. 67) this system lasted until the year 1888.

In the year 1888 (by St. 1888, c. 2^F /) this system was wholly changed. By section 1 of that act the salaries of the different clerks of courts were established, and it was provided that their salaries should be paid to them in monthly instalments by the treasurers of the respective counties, and (by section 4) it was provided that all fees received by the clerks of courts should be paid over each month to the respective county treasurers.

By section 3 a single entry fee of \$3² was substituted for the several fees which theretofore had to be paid to the clerks of courts for their services at different stages of a case in court.

Under the system introduced in 1888 (by which the clerks of courts were paid a fixed salary and the fees collected for services rendered in the clerks' offices were paid to the county treasurer) no one was personally interested in the amount paid by litigants for services rendered in these offices. The result has been that the matter of seeing to it that litigants paid a proper fee for the services rendered in the offices of clerks of courts is a matter which has been lost sight of and, perhaps, it is not too much to say it is a matter which has been neglected.

As we have already said the Legislature to some extent has already entered upon the policy of making the litigants pay the expenses of the clerks' offices.

In 1923 (by St. 1923, c. 375, § 4) the fees payable for services rendered in the clerk's office of the Land Court including the examination of titles made by order of the court were increased in amount. The result of this increase is that today these expenses of the Land Court are met and a

¹ An exception was made in the case of the Clerk of Courts for the County of Dukes County. He was allowed to retain the whole of the fees received by him in any event.

² Coupled with the provision for a uniform entry fee of \$3 it was provided in § 7 of the statute (St. 1888, c. 257, § 7, now G. L., c. 262, § 6) that a further fee should be paid when a judgment or decree was of unusual length. The provision made was that the fee so to be paid was to be of "such amount . . . as may be just and equitable." But this provision was in fact nugatory. Fourteen of the fifteen clerks of courts who answered an inquiry made by the Judicial Council on the subject have reported that in their experience no order has ever been made under § 7. Moreover, since the adoption of the general rule as to abbreviated records which took effect on January 15, 1926 (see Rules of Supreme Judicial Court, 1926, pp. 59-65), it is altogether improbable that any order under that or a similar provision of statute would be hereafter made if that provision were continued in force.

little more than met by the fees paid by litigants. These receipts and expenses of the Land Court for the year 1925 were as follows:

Fees received (net applicable to clerical cost)	\$37,901 99
Salaries of the office force of the Land Court (including the Engineers' Department)	33,360 00

This leaves a surplus of fees received over expenses incurred of . . . \$4,541 88

In the annual address to the Legislature in the present year Your Excellency said: "There should be established a system of fees for the filing and allowance of petitions and other papers in the probate courts of the Commonwealth. The cost of these courts to the Commonwealth has increased from \$162,741 in 1910 to \$357,445 in 1925. The general taxpayer should be relieved of this special tax and adequate charges made for services rendered to those receiving that service. Probate court fees are generally charged in the various states of the Union. If it is equitable and proper to charge fees in the other courts of the Commonwealth, it is equally so in the probate courts."

This suggestion was in fact a suggestion for a return to the policy which was in force before 1823.

Before 1823 fees were charged for the services of registers of probate; in fact they were paid for their services by the fees paid to them by litigants and that was the only compensation they received. But this was changed by St. 1823, c. 141, § 3. That act provided that no fees should be paid for services in the clerk's office of probate courts, *i.e.*, for services rendered by registers of probate.

Pursuant to this suggestion of Your Excellency some fees were made payable for services rendered in the offices of registers of probate; see St. 1926, c. 363, § 2.

But it is patent on the face of that act that the system of fees there adopted does not go as far as the system went which was adopted for the Land Court three years before. The Judicial Council have taken steps to get a statement of the receipts and expenses of the offices of registers of probate throughout the Commonwealth. But the investigation has not been completed and the matter of these fees will have to be dealt with later on.

When you suggested the adoption of fees in the clerks' offices of the Probate Courts Your Excellency went further and said: "The legislature may well consider the other legal fees and charges so as to make them adequate to more nearly meet the cost that is now borne by the general taxpayer."

The Council has taken up for consideration the fees now payable in the clerks' offices of the 73 District Courts including the Municipal Court of the City of Boston. An investigation of the amounts received and the sums paid out in these clerks' offices has been begun but has not been completed in time to be dealt with at the present time.

But the Council is prepared to take up now the receipts in civil cases of the clerks of courts in the different counties of the Commonwealth outside of Suffolk County (that is to say, in the clerks' offices of the Supreme Judicial and the Superior Courts for these counties) and those of the clerk's office of the Supreme Judicial Court for the County of Suffolk, the clerk's office of the Supreme Judicial Court for the Commonwealth and the clerk's office of the Superior Court for Civil Business in Suffolk County.

The amounts received and paid out in the clerks' offices of these courts in the calendar year 1925 were as follows:¹

CLERKS OF COURTS.

Receipts and Expenditures, 1925, with Net Cost of these Offices.

COUNTY.	RECEIPTS.	EXPENDITURES.			Net Cost.
		Three-fourths Salary of Clerk, Assistant Clerks, and Clerical Assistance.	Salary of Clerk, Assistant Clerks, and Clerical Assistance for Full Year Based on Eleven Months' Expenditures.	Total Cost for Clerk, Assistant Clerks, and Clerical Assistance.	
Barnstable	\$525 65	\$3,202 01	-	\$3,202 01	\$2,676 36
Berkshire	1,162 65	5,021 90	-	5,021 90	3,859 25
Bristol	3,725 12	10,957 65	-	10,957 65	7,232 53
Dukes	119 50	1,125 00	-	1,125 00	1,005 50
Essex	8,098 05	28,491 24	-	28,491 24	20,393 19
Franklin	1,015 50	3,750 00	-	3,750 00	2,734 50
Hampden	8,078 07	15,837 49	-	15,837 49	7,759 42
Hampshire	841 40	4,202 25	-	4,202 25	3,360 85
Middlesex	14,536 02	35,679 26	-	35,679 26	21,143 24
Nantucket	116 25	1,125 00	-	1,125 00	1,008 75
Norfolk	3,585 10	9,828 35	-	9,828 35	6,243 25
Plymouth	2,412 57	7,605 00	-	7,605 00	5,192 43
Suffolk Supreme Judicial	4,486 10	-	\$32,285 11	32,285 11	27,799 01
Suffolk Superior Civil	40,732 65	-	185,366 28	185,366 28	144,633 63
Worcester	8,749 01	22,905 04	-	22,905 04	14,156 03
	\$98,183 64	\$149,730 19	\$217,651 39	\$367,381 58	\$269,197 94
Supreme Judicial Court for the Commonwealth	1,234 00	-	-	8,384 95	7,150 95
Totals	\$99,417 64	\$149,730 19	\$217,651 39	\$375,766 53	\$276,348 89

¹ The figures in this table with the exception of those for the Supreme Judicial Court for the Commonwealth have been given to the Council by Mr. Waddell, the Director of Accounts of County Finances. Those for the Supreme Judicial Court for the Commonwealth have been given us by the clerk of that court. The figures given do not include stationery, files, books and general office supplies (including printing) but they do include the services of clerks sitting in court during the trial of cases. The salaries of the clerks, assistant clerks and the sums paid for clerical assistance are paid as a lump sum for services in civil and criminal cases. We have been told on inquiry that so far as that can be estimated three-quarters of this lump sum can be taken to have been incurred for services on the civil side of the court.

The fees now payable for services in the offices of the clerks of courts are set forth in G. L., c. 262, § 4, amended by St. 1926, c. 363, § 1. In addition to the entry fee of \$3 in civil acts and \$5 in libels for divorce these fees today are:

1. For a blank writ of attachment and summons or an original summons and for a writ of review or other writ in civil proceedings not before mentioned 5 cents
2. For entry, record and transmission of papers of each question or case in the Supreme Judicial Court for the Commonwealth 3 dollars
3. All written copies, including such as are prepared for printing, shall be charged at the rate of twenty cents a page.
4. For a subpoena for one or more witnesses 10 cents
5. For a *venire facias* for jurors 6 cents
6. For the warrant for a county tax 20 cents
7. For a certificate of the proof of a deed in court 20 cents
8. For taking and recording a recognizance under chapter two hundred and fifty-six 50 cents

As to these it may be said:

4. Subpœnas for witnesses are rarely if ever drawn by clerks of the Supreme Judicial or Superior Courts. The provisions of ten cents for such a subpoena was adopted by St. 1795, c. 41, § 1, "Fees of clerk in the Supreme Judicial Court," and has come down without change from that time. It may be left undisturbed as a provision which is innocuous.

5 and 6. The *venire facias* for jurors and a warrant for a county tax are paid out of the public revenues. It is of no consequence, therefore, whether ten cents and six cents are paid for these writs or not. As the payment made for them is returned to the public, from whom the payment is required, these provisions might well be repealed. As a matter of interest the fee of six cents for each *venire facias* was adopted by St. 1795, c. 41, § 1, "Fees of the clerk of the Supreme Judicial Court," and has come down without change since then. These properly may be abolished.

7. A fee for a certificate of the proof of a deed under G. L., c. 183, §§ 34-39, should be provided for so long as the statutes provide for proof of the execution of a deed where the grantor dies or removes from the Commonwealth without having acknowledged execution of it. The amount of the fee is not of importance. On inquiry the clerk for civil business of the Superior Court for Suffolk County writes that he does "not recall an instance where such a certificate has been made." This fee and the amount of it we suggest may remain undisturbed.

8. The fee for taking and recording a recognizance under c. 256 may remain undisturbed.

This leaves for consideration:

- A. Entry fee in the Supreme Judicial Court for the Commonwealth.
- B. Fee for blank writs 5 cents each.
- C. Written copies 20 cents a page.
- D. Entry fee of \$3 in Supreme Judicial and Superior Courts.

A. In counties outside of the six counties for which the Supreme Judicial Court for the Commonwealth sits (the six being Suffolk, Middlesex, Essex, Norfolk, Plymouth and Barnstable) there is no fee paid which corresponds to the \$3 entry fee paid for the entry of a case in the clerk's office of the Supreme Judicial Court for the Commonwealth. The expenses of the clerk's office of the Supreme Judicial Court for the Commonwealth amount to \$8,384.95, and the receipts for 1925 amount to \$1,234, making a net deficit of \$7,150.95. There are now on an average about 411 cases entered in the Supreme Judicial Court for the Commonwealth. To make the fees for entries in the Supreme Judicial Court for the Commonwealth pay the expenses of the clerk's office of that court would require an entry fee of \$17 to \$18. Having regard to the fact that no similar fee is or could be required in counties outside of the six for which the Supreme Judicial Court for the Commonwealth sits, and also having regard to the amount of the fee necessary to meet the expenses of the clerk's office of the Supreme Judicial Court for the Commonwealth, it seems to the Council that the expenses of this office ought not to be dealt with separately but should be added to and dealt with as part of the clerk's office of the Supreme Judicial Court as a whole. This fee should remain undisturbed.

B. The real source of revenue in the clerks' offices of the Supreme Judicial and Superior Courts is the entry fee (which originated in St. 1888, c. 257) and which is now \$3. By St. 1926, c. 363, § 1 the entry fee of a libel for divorce was made \$5. But by § 4 this did not take effect until December 1 of the current year.

In the returns made under G. L., c. 35, §§ 25-27, the amount received by the "clerks" of courts are given as a whole. To determine how much of these receipts come from the three dollar entry fee the Council has had the receipts in Suffolk and Middlesex Counties analyzed.

Taking the analysis of the receipts for these two counties and estimating on that basis the amounts received by clerks of courts throughout the Commonwealth, the receipts from entries may be taken to be about 89 per cent of the total receipts of the clerks' offices.

The receipts for all the clerks' offices from all sources were (see *supra*) \$99,417.64. Eighty-nine per cent of this, which may be taken to be the receipts from the entry fee of \$3 each, is \$88,481.69.

This would make at \$3 an entry an estimated number of total entries of 29,494. But of these entries 411 (estimated) are entries in the Supreme Judicial Court for the Commonwealth which are to remain at \$3. Apart from the entries in the Supreme Judicial Court for the Commonwealth the number of total entries with which we are to deal comes to 29,083.

The Council has been advised on adequate authority that the purchasing power of a dollar is today not more than half what it was in 1888, when the entry fee of \$3 was established in lieu of the several fees discontinued by St. 1888, c. 257, § 3. If the entry fee today were revised to make it the equivalent of what it was in 1888, it would be \$6 in place of \$3. There can be no question of the justice and expediency of making the entry fee today \$6 in place of \$3.

The Council on the whole recommend an entry fee of \$15 in place of \$6. Fifteen dollars is the amount which has to be deposited on the entry of an action at law in the federal courts in this circuit at any rate. In suits in equity the amount is twenty-five dollars. It does not seem to be too onerous to put the two higher state courts on what is in substance the same basis as that of the Federal Courts in case of actions at law. We put it in that way because technically the \$15 paid on entry of an action in the Federal Courts is a deposit to meet fees in the cause. If the recommendation of the Council is adopted the increased amount received by making the entry fee \$15 in place of \$3 (if the amount of litigation in the two courts is not reduced and it is the hope and expectation of the Council that it will be reduced by this increase in the amount of the entry fee) may be estimated to be about \$348,996.

But it is the hope and expectation of the Council that increasing the entry fee to \$15 in place of \$3 will diminish the amount of litigation, *i.e.*, that it will diminish the number of entries.

C. It is provided by G. L., c. 262, § 5, that: "All written copies, including such as are prepared for printing, shall be charged for at the rate of twenty cents a page." It is provided by G. L., c. 262, § 45, that a page is 224 words.

Copies made by registers of deeds are by statute charged at the rate of 40 cents in place of 20 cents a page (see G. L., c. 262, § 38, line 14); and fees in the Land Court are the same "as are provided for registers of deeds;" (see G. L., c. 262, § 39, lines 55 and 56) and the same rate for copies was adopted in St. 1926 for registers of probate; see St. 1926, c. 363, § 2, lines 25-28.

Copies seem to be about 5 per cent of the receipts of the "clerks' offices." If the rate at which they were charged were doubled the additional amount

received in the clerks' offices of the Commonwealth as a whole would amount to about \$4,970.

D. The fees "for a blank writ of attachment and summons, or an original summons," "for a writ of review or other writ in civil proceedings not before mentioned," are by G. L., c. 262, § 4, at the rate of five cents for each writ.¹

The receipts from fees for writs may be taken throughout the Commonwealth to be about 2 per cent of the receipts for all receipts taken in by the "clerks of courts."

The Council recommends that the fees for writs should be \$1 in place of 5 cents.

If that were done the increased amount received from fees for writs (if the present amount of litigation is not reduced in amount) may be estimated to be about \$28,793.

In addition to these fees which are on the statute book, the Council recommends the imposition of a fee of \$1 for filing a motion to amend a pleading or for the allowance of an amendment to a pleading if an order is made for the allowance of such an amendment without a written motion having been filed. The requirement of such a fee could not fail to make attorneys use more care in drawing up their pleadings in the first instance. That means that cases will be thought out to a conclusion and reduced to the real issues on which they ought to be tried at the beginning of the litigation, and not put off (as is too often the case now) until the final preparation for trial begins or indeed until the trial of the case has not only been begun but has gone on to a substantial extent.

Of course no estimate can be made of the additional amount which will be received in case this fee is adopted.

¹ The clerk's fees of the clerk of the Supreme Judicial Court for blank writs in St. 1795, c. 41, § 1 (when the clerks' compensation was derived from the fees taken in by them) were as follows: "a writ of review seventy cents;" "a writ of *scire facias* forty cents;" "a writ of *habeas corpus* forty cents;" "every writ and seal other than before mentioned forty cents;" "a writ of protection twenty cents."

In the Revised Statutes (Rev. Sts., c. 122, § 2) the fees were as follows: "For every blank writ of attachment and summons thereon, and every original summons, fifteen cents;" "every writ of review, *scire facias*, *certiorari*, *habeas corpus* or other special writ forty cents;" "every writ not before mentioned forty cents."

In the General Statutes (Gen. Sts., c. 157, § 3) the fees were as follows: "For a blank writ of attachment and summons or an original summons five cents;" "for a writ of review or other special writ forty cents;" "for any writ not before mentioned forty cents."

In Public Statutes (P. S., c. 199, § 4) the fees were as follows: "For a blank writ of attachment and summons or an original summons five cents;" "for a writ of review or other writ in civil proceedings not before mentioned forty cents."

In the Revised Laws (R. L., c. 204, § 6) the fees were as follows: "For a blank writ of attachment and summons or an original summons five cents;" "for a writ of review or other writ in civil proceedings not before mentioned five cents."

Under General Laws (G. L., c. 262, § 4) the fees are in *totidem verbis* the same as those set forth in the Revised Laws.

To sum up the financial results of the foregoing recommendations of the Council they are estimated to be:

Present receipts	\$99,417
Additional receipts by making the entry fee \$15 in place of \$3	348,996
Additional receipts for making the fee for issuing a writ \$1 in place of 5 cents	28,793
Additional receipts for making the fee for copies 40 cents in place of 20 cents a page	4,970

\$482,176

To which should be added the additional amount which cannot be estimated in case a \$1 amendment fee is adopted.

The present expenses are	375,766
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This makes a surplus (on the basis stated above and on the assumption that there is no reduction in the present expenses and without taking into account the result of the \$1 amendment fee) of \$106,410

The amount of this estimated surplus will be cut down by what reasonably may be hoped for in the way of a reduction in the amount of litigation and against that should be set the result of the \$1 amendment fee which will bring in some but not a large revenue.

In the opinion of the Council the following changes should be made in the fees charged by the "clerks of courts:"

1. The entry fee should be \$15 in place of \$3, except for entries in the Supreme Judicial Court for the Commonwealth which should remain at the sum of \$3.
2. The fee for issuing a writ should be \$1 in place of 5 cents.
3. A \$1 fee should be imposed for moving to amend or for amending pleadings allowed without a written motion.
4. The fee for copy should be at the rate of 40 cents a page in place of 20 cents a page.
5. The fees for the writ of *venire facias* for jurors and for warrant for a county tax should be abolished.

Alternative Scheme.

In case the Legislature prefers to abandon the simple system adopted in 1888 requiring an entry fee and substantially no fees for action taken at the different stages of a case in court, we submit the following outline of such a scheme. One member of the council prefers this alternative scheme.

If such a scheme is adopted it is the opinion of the Council that a system like that which prevails in England ought not to be taken on. The system of fees paid in the clerk's office of the High Court in England is like the system of costs between party and party which obtains in that jurisdiction.

In a word it consists in a very great number of small fees which are charged for pretty much every action even including those of the smallest kind in cases pending in court. There are 148 different fees payable in the clerk's office of the High Court. A copy of the order establishing them is set forth in Appendix D.

If a system of fees to be paid at different stages of cases pending in courts is to be adopted the Council suggests the following which number 24 in all:

1. Entry fee of \$6 in actions at law.
2. Entry fee of \$10 in suits in equity.
3. Writs, any amount up to \$1 each.
4. Execution charge \$1.
5. Notarial certificates \$1.
6. Certificates of judgment and non-entry \$1.
7. Witnesses to be summoned on subpoenas signed by clerks of respective courts issued in blank, same as writs 50 cents each.
8. Clerks to charge \$1 an hour for searching records.
9. All appearances, jury claims, markings for trial and witness certificates shall be on blanks furnished by clerk for which he shall charge 20 cents each.
10. Every other blank used by clerk for which a fee is not provided by law 20 cents each.
11. Each copy of record certified for the full court of the S. J. C. \$1 each.
12. Fee for each trial list based on cost plus postage.
13. Fee for copies of Rules of Court and Orders of Business, etc., based on cost plus postage.
14. Fee on issuing an injunction \$10.
15. Fee for marking a case for trial a second or subsequent time when it was not ready for trial when reached.
16. Fee for progressive *ad damnum*, e.g., fee of \$1 for every \$1,000 in *ad damnum* of writ over \$5,000.
17. Fee for filing interrogatories \$1.
18. Fee for motion to remove default or non-suit \$1.
19. Fee for certificate of decree of divorce \$5.
20. Fee for filing written motion to amend or order allowing amendment on motion not made in writing \$1.
21. Fee for copy at 40 cents a page.
22. For entry, record and transmission of papers of each question or case in the Supreme Judicial Court for the Commonwealth \$3.
23. For a certificate of proof of a deed in Court 20 cents.
24. For taking and recording a recognizance under Chapter 256 50 cents.

Most of these fees speak for themselves.

A word or two may be said as to some of them:

9 and 10: These fees have a double aspect. Under the adoption of the general rule as to abbreviated records (Rules of Supreme Judicial

Court 1926, pp. 59-65) writing out of an extended record of the cases in court has been abolished and the papers on file in the different actions become the permanent record of the case.

The permanence of this court record of cases in court is today put in jeopardy by reason of the paper used by the parties for their pleadings and for the orders made by the court. A great deal of the paper used for these purposes is paper of the cheapest kind which will not last. In addition to that it is a not infrequent custom of attorneys to put a backing on pleadings and orders of the court and these backings are thicker than the paper which is backed. Where that is done the size of the record of the case is more than twice as great as it ought to be. It is a fact (so we are informed) that the court houses throughout the Commonwealth are already put to it to find room for these records of cases in court. In addition to that it is not an infrequent practice for a judge on making an order to write it out and sign it on the backing of the motion on which the order is made and these backings are made of perishable paper. Already the clerks of courts have in many instances put the counties to the expense of furnishing blanks to be used by attorneys for appearances, jury claims, markings for trials and witness certificates, for example, because for the reasons just stated the money so spent is on the whole well spent. The amount to which the counties have been put in this respect (so the Council is informed) comes to about \$9,000 a year. As matter of policy all papers in cases in court which now make the record of the case ought to be on good paper not perishable, uniform in kind and without a backing. The preservation of the records of cases in court under the abbreviated records rule of the Supreme Judicial Court requires the adoption of some provision with respect to the papers which are to constitute the record of cases. The fees suggested insure to some extent the use of good paper and in addition they will give relief to the general taxpayer.

12 and 13: Printing the October General Trial List of the Superior Court in Suffolk County alone is said to cost about \$4,000, and (it is said) about 600 of these trial lists are distributed for which now 25 cents apiece only is charged. In other words, the general taxpayer pays some \$3,500 for the trial list of the Superior Court in Suffolk County alone. A similar expense which falls upon the general taxpayer is the expense of printing the rules of court and the orders of business. The Council is not advised as to the cost so incurred but there is no reason why this should fall upon the general taxpayer.

As to 15: When a case is marked for trial and is not tried when reached it is reasonable to impose a fee in case it is marked for trial again.

As to 16: This fee not only would produce revenue and so relieve the general taxpayer but it would tend to stop the abuse of process which consists in inserting in a writ an unconscionably large *ad damnum* and making an attachment under it to force a settlement.

While the Council has some information upon the amount which might be expected to be derived from some of these fees in some, but not in all courts or from a part of them, it is not in a position to make even a guess as to how far the present deficit of \$276,348.89 would be met by this alternative scheme. But there is no reason to suppose that they would take care of the present deficit.

APPEALS FROM THE APPELLATE DIVISIONS OF DISTRICT COURTS.

There seems to be no sufficient reason for permitting an appeal as of right from the appellate divisions of the district courts to the Supreme Judicial Court. One of the principal arguments advanced in favor of the recent legislation abolishing appeals in civil cases from the municipal and district courts to the superior court and substituting a right of removal on the part of defendants was based on the undesirability of permitting two trials in the smaller cases when there could be only one trial of an action brought originally in the Superior Court. For similar reasons it appears to be unnecessary to allow two appeals as of right upon questions of law arising in cases tried in the lower courts. The appellate divisions are composed of able judges. Experience has shown that in a great majority of cases their decisions are affirmed by the Supreme Judicial Court. It is true that in some of the cases decided by appellate divisions important questions of law are involved which should be passed upon by the highest court, and that in other cases other valid reasons exist for permitting a reargument. But cases of this sort we think would be amply provided for if the Supreme Judicial Court were given power to grant leave to appeal, upon motion of the losing party. Such a motion could be filed in the Supreme Judicial Court, with the typewritten report upon which the case was heard in the appellate division and the opinion of the division, and could be accompanied if desired by a brief typewritten statement of the reasons for asking leave to appeal, but oral arguments upon the motion should not be allowed.

The justices of the Supreme Judicial Court are now overburdened with work and while the legislation which we now propose would relieve them of only a small fraction of their labors it would, we believe, be a step in the right direction.

It would ordinarily be less of a task to decide several such motions than to deal in regular course with a single appealed case, which involves hearing oral arguments, considering briefs and writing an opinion. The work of the Supreme Court of the United States has been much facilitated by the recent legislation eliminating appeals as of right in various classes of cases and substituting review on certiorari.

The present statutory provisions with respect to appeals from the appellate division of the Municipal Court of the city of Boston are contained in General Laws, chapter 231, section 109, and these provisions were made applicable to appeals from appellate divisions of all the other district courts by Statutes 1922, chapter 532, section 8.

Our recommendation can be carried out by substituting for the first three sentences of General Laws, chapter 231, section 109, the following and making the section thus amended applicable to the appellate divisions of all district courts.

An appeal shall lie from the final decision of the court by the appellate division thereof to the Supreme Judicial Court for the Commonwealth upon leave granted by said court. A claim of appeal shall be filed in the office of the clerk of said Municipal Court within five days after notice of the decision of the appellate division, and within ten days after such notice a motion for leave to appeal shall be filed in the office of the clerk of the Supreme Judicial Court for the Commonwealth, accompanied by five typewritten copies of the report upon which the case was heard by the appellate division and of the opinion of said division. For the preparation of these copies a reasonable fee shall be charged, to be fixed by the justices of said Municipal Court. At the same time there may be filed in typewriting a succinct statement of the grounds for asking leave to appeal, but no oral argument upon the motion shall be permitted. If leave to appeal be granted the cause shall not be removed but only the question or questions to be determined.

Section 110A of said chapter 231, inserted by section 8 of chapter 532 of the Acts of 1922, is hereby amended by adding at the end thereof the words "and in any county which is not included in the regular sittings of the supreme judicial court for the commonwealth the motion for leave to appeal shall be filed with the clerk of courts for such county and by him transmitted with all papers to the chief justice of the supreme judicial court."

TRANSMISSION OF OPINIONS BY THE COURT BELOW ON APPEAL TO THE SUPREME JUDICIAL COURT.

Opinions which may be written by judges before whom cases are tried form no part of the record on which the cases go on appeal to the Supreme Judicial Court. This is also true of opinions of the appellate divisions of the municipal and district courts, which are themselves courts of appeal and always file written opinions with their decisions.

The Judicial Council are of opinion that when a case is before the Supreme Judicial Court as the final court of appeal the court should have before it all the light it can have on that case. The opinion of the court whose decision is to be reviewed shows the grounds on which the court proceeded and should be before the appellate court.

It seems to the Council that this might be secured by amending G. L., c. 212, § 11, which deals with the preparation and transmission to the full court of two copies "of every paper on file in the case except papers used in evidence only."

It also seems to the Council that G. L., c. 212, § 11, which today applies to cases going from the Superior Court only ought to apply to cases going to the full court from all lower courts.

An act to carry these recommendations into effect will be found in Appendix C, p. 115.

RESERVATION BY THE SUPERIOR COURT OF WORKMEN'S COMPENSATION CASES.

Section 11 of the Workmen's Compensation Law (G. L., c. 152) provides, that after a decision of the Department of Industrial Accidents any party may present the case "and all papers in connection therewith, to the Superior Court . . . whereupon said court shall render a decree in accordance therewith."

The Supreme Judicial Court has held that these words mean that the Superior Court is to enter "such a decree as the law requires upon the facts found by the board. It does not make the action of the Superior Court a mere perfunctory registration of approval of the conclusions of the law reached by the Industrial Accident Board. . . . The obligation placed upon the Superior Court by the requirement to enter a decree in accordance with the decision is to exercise its judicial function by entering such decree as will enforce the legal rights of the parties as disclosed by the facts appearing on the record." *McNicol's Case*, 215 Mass. 497, 502. And see *Brown's Case*, 228 Mass. 31, 38. *Bell's Case*, 238 Mass. 46, 52. *Gillard's Case*, 244 Mass. 47, 55.

We understand that the Superior Court is seldom asked to consider a contested case under this section except where it is practically certain that, whatever the decision may be, an appeal will be taken to the Supreme Judicial Court. These cases are sufficiently numerous to add materially to the work of the Superior Court, and to impose upon its judges labor which would appear often to be unnecessary. A case of this character has already been fully decided, as to facts and law, by the Industrial

Accident Board, and it is not necessary that the Superior Court should deal with the merits in order to put the record in shape for the full bench.

If it is likely that the decision of the Superior Court will be accepted by the parties as final that court should most assuredly deal with the case and not encourage the parties to take it to the higher court. But if one party or the other is certain to take it up, we think the judge of the Superior Court should have a right to reserve the case without a decision.

We recommend, therefore, that G. L., c. 152, § 11, be amended by adding at the end thereof the following:

In any case in which an appeal would lie from a decree of the superior court under this section a justice of said court without making any decision therein may reserve the case for determination by the supreme judicial court.

PRIVATE CONVERSATIONS BETWEEN HUSBAND AND WIFE IN DIVORCE AND SEPARATE SUPPORT CASES.

By St. 1911, c. 456, § 7 (commonly referred to as "The Uniform Deser-tion Act"), the Legislature provided that:

In no prosecution under this act shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the fact of their marriage and the parentage of the child or children: *provided*, that neither shall be com-pelled to give evidence incriminating himself or herself.

This provision now appears in G. L., c. 273, § 7, and G. L., c. 233, § 20.

We do not think that the exception to the general rule as to private conversations between husband and wife should be confined to cases arising under G. L., c. 273, §§ 1-10, as it is now provided by G. L., c. 273, § 7 and G. L., c. 233, § 20. We are of opinion that it should be extended to other cases involving domestic relations such as divorce and suits for separate maintenance. The attorney general, in his last report, has made a recommendation to this effect.

We recommend that G. L., c. 233, § 20, be amended by inserting in the clause marked "First" after the word "seventy-three" the words, "and libels for divorce under chapter two hundred eight or proceedings under sections thirty to thirty-seven of chapter two hundred nine," so that the clause shall read:

First. — Except in a prosecution begun under sections one to ten inclusive of chapter two hundred seventy-three and libels for divorce under chapter two

hundred eight or proceedings under sections thirty to thirty-seven of chapter two hundred nine, neither husband nor wife shall testify as to private conversations with the other.

One member of the Council does not concur in this recommendation. As there are frequent suggestions made that the protection of such private conversations from disclosure should be abolished in all cases, the recommendation here made must be understood as strictly confined to the specified cases of domestic relations.

Witness Fees in the District Courts and before Masters and Auditors.

The fee paid to a witness summoned in the District Court, or before a master or auditor, is fifty cents. The fee paid to a witness summoned in the Superior Court is \$1.50. This difference has existed for many years. Presumably the reason for it is a desire to make litigation in the lower court less expensive. But we see no reason why a witness whose time is taken up in one court should be paid any less than a witness whose time is taken up in another court. In fairness to witnesses who are thus drafted, we recommend that the witness fee in the district courts and before masters or auditors be made the same as the witness fee in the Superior Court.

MASTERS' HEARINGS.

In our First Report, we discussed the practice as to masters' hearings in equity in Massachusetts and suggested a new equity rule as to references to masters. Briefly, the proposed rule would provide that instead of referring a case to a master merely to hear the evidence and find the facts the usual form of reference now in use should be changed so that the master would be expected to make rulings of law, and, if necessary and practicable in order to shorten the hearing and avoid the expense and delay of taking evidence on alternative theories of law, to make an interlocutory report to the court and ask for instructions as to the future conduct of the hearing.

Our reasons were fully explained in our First Report, pages 54-60. As the Superior Court has now been given power to make its own rules in equity under St. 1926, c. 138, we respectfully call the discussion in that report to its attention and suggest that it consider whether all or parts of our recommendation of last year may not be effectively tried.

ADMISSION TO THE BAR.

In our First Report (p. 65) we referred to the recommendation of the Judicature Commission that the present statutory restriction as to the educational requirements for admission to the bar should be removed and that the matter should be left to the justices of the Supreme Judicial

Court who can be trusted to regulate it in the interest of the public. The Judicial Council endorsed this recommendation and submitted an act to carry it into effect (First Report, p. 147).

As the law stands (St. 1915, c. 249, now G. L., c. 221, § 36) the Board of Bar Examiners may, with the approval of the Supreme Judicial Court, make rules with reference to the qualifications of applicants for admission to the bar, but it is specified in the statute that an applicant "who has fulfilled for two years the requirements of a day or evening high school or a school of equal grade, shall not be required to take any examination as to his general education." So far as we know there are no educational standards which must be maintained throughout the state in the evening high schools and, consequently, the clause which we have quoted and which was first introduced into our law in 1915 practically means that there shall be no measurable standard of education whatever. This means that Massachusetts ranks very low among the states of the Union in respect to the educational requirements for admission to the bar, far below Kansas, Nebraska, Oklahoma, Montana, South Dakota and most of the other states. As the standards are constantly being raised elsewhere, Massachusetts is steadily occupying a more and more inferior position.

Much of the opposition to measures raising the standards for admission to the bar has come from those who approach the matter from the wrong point of view. It is said that raising the standards will place obstacles in the way of deserving young men who are too poor to obtain a proper preliminary education. This does not take into account the public interest, and overlooks the patent fact that it is the people in humble circumstances who suffer most from untrained lawyers.

No one would seriously contend that the standards for admission to the medical profession should be kept low merely in order that poor young men might become physicians and surgeons. The public interest that no one be allowed to practice medicine or surgery unless properly qualified is recognized as paramount. It is only a misconception of democratic principles which leads to a different view regarding the legal profession. The interests of the many are forgotten and attention centered upon the supposed interests of the few.

A poorly trained bar is a source of great expense to the public. Not only do the clients suffer but the time of the courts is wasted as a result of the incompetence of lawyers and the dockets are clogged with unjustifiable litigation. The people should realize that they are paying the price of low standards of legal education.

It is not judges and lawyers alone who are noting the present unsatisfactory conditions. The attention of the general public is gradually being

drawn to the situation, as appears from the report of the commission of laymen, appointed under chapter 33 of the Resolves of 1922, where the statute under consideration was commented on as setting a low standard and one of such vagueness as to have no definite meaning. This commission consisted of Hector L. Belisle of Fall River, Rev. William Devlin, S.J. of Newton, Jeremiah F. Driscoll of Boston, Dr. Lemuel H. Murlin of Boston, Carlton D. Richardson of West Brookfield, Felix Vorenberg of Boston.

Beside renewing our recommendation of last year on the matter of educational requirements we endorse the bill (House 1184) which was reported last year by the Judiciary Committee and passed to be engrossed by the House, providing that there should be an inquiry into the "fitness" of candidates for admission to the bar. The Senate referred this bill to the next annual session. The developments in connection with the bar examinations in July, 1925, furnish an argument in support of this bill.

We see no likelihood whatever that the passage of these bills will prevent any reasonably competent man of character who is willing to work from being admitted to the bar. On the other hand we believe that great injury to the people of Massachusetts will result from the steady deterioration of the bar which is bound to follow the continuance of present conditions.

DISTRICT COURTS.

Criminal Appeals from the Municipal Court of the City of Boston.

In our last report, we recommended the experiment of providing that in the Municipal Court of the city of Boston a defendant in a criminal case should be required to choose before trial whether or not he wants a jury trial.

If he claims a jury, as is his constitutional right, he would be sent at once to the Superior Court; if he does not claim a jury, he should be tried in the Municipal Court and have no appeal on the facts but should have a right to a prompt review of his sentence by a reviewing division of the Municipal Court composed of three judges and an appeal on law questions to the present appellate division. This experiment was, and is, suggested because in the opinion of the Council one of the great obstacles to the prompt administration of the criminal law is our present appeal system, which gives to defendants in criminal cases in the Municipal Court of the city of Boston and other district courts, to ensure to them their constitutional right to trial by jury, an appeal to the Superior Court after they have been found guilty and sentenced in the court below.

In your message to the Legislature in January, 1926, Your Excellency made the following recommendation:

That a person accused before a Municipal or District Court be required to choose before trial in that court between a trial without jury in the lower court and a trial by jury in the Superior Court, and that if he chooses a jury trial the proceedings be immediately transferred to the Superior Court.

We respectfully suggest that it would be wiser in trying this experiment not to try it in all the district courts at once throughout the state, as Your Excellency's recommendation seems to contemplate, but to confine the experiment to the central Boston Court and to give it a fair trial there. The Municipal Court of the city of Boston, while it is classed generally as a "district court" in the General Laws, differs from other district courts in that it is a large court with judges who devote their entire time to the work of the court and that court deals with a larger volume of business than any other tribunal in the Commonwealth. In view of these facts, it has been naturally and properly used as an experiment station by the legislature in the development of judicial organization and procedure. We believe it to be in the interest of the public that this practice should continue because, in judicial procedure, as in other human activities, progress comes as the result of careful experiments. The experiment of single trials on the facts in civil cases was tried in this court under the act of 1912 for ten years before it was extended to other courts as a result of the successful administration of the plan in this court. In the report of the Commission on the Lower Courts of Suffolk County of 1912 which formulated this plan, it was stated that "Experience on the civil side will better determine the wisdom of subsequent extension to criminal cases." (See H. 1638 of 1912, p. 15.)

The Judiciary Committee of the legislature reported the plan favorably in 1923 (S. 361) but, instead of limiting it as an experiment to the Boston Court as was recommended by the Judicature Commission in its report in 1921 (H. 1205 of 1921), they proposed the plan contained in Your Excellency's suggestion of applying it to all the district courts at once. The bill was defeated in the Senate and very possibly because the legislature felt that such an experiment on so broad a scale was a mistake.

As we stated in our first report, p. 21:

We think the advice of the Judicature Commission should now be followed and the plan adopted for the Boston court alone. The judges of that court made a success of the act of 1912 which abolished civil appeals, and in 1922 that act was extended to all district courts. We believe that the judges of the Boston court can make this plan for criminal cases work effectively if they are given the

chance. We do not believe the Commonwealth can afford not to try this plan when the public are clamoring for some constructive work to meet the problem of crime. Promptness is needed in the criminal law. Promptness is impossible under the present appeal system.

The Council again recommends the act relating to this subject which is printed in Appendix C of its first report, p. 135.

Inquests.

In our First Report, pages 50-52, we pointed out that 827 inquests were held in one year by district court judges under the statute which provides that such inquests must be held in all cases of death upon steam railroads or street railways, and from automobile accidents, and that in view of the duties of departments of public utilities and of public works, and of the several police departments and medical examiners, there is a duplication, and often a triplication of expense, time and attendance of witnesses as a result of these mandatory inquests. An account of the history and purpose of inquests was given in our report and we expressed the opinion that:

Unnecessary inquests ought not to be held to the great inconvenience of witnesses and at the expense of the commonwealth or of railroads or railways, especially where persons responsible for the death have already been proceeded against. Inquests should be held at the discretion of the court, and mandatory only when requested by the attorney general or district attorney of the district. This is the judgment of the Administrative Committee and the consensus of opinion of the justices of the district courts.

We again express this opinion and recommend the passage of the bill which we submitted last year in Appendix C of our First Report, page 146.

Jurisdictional Limits of District Courts.

In our First Report, pages 47-50, we recommended —

the repeal of the present pecuniary jurisdictional limits of the district courts so as to allow suits of any amount, but with the unrestricted right of removal to the Superior Court by the defendant in cases in which more is demanded than five thousand dollars in the Boston court and more than three thousand dollars in other courts, on conditions specified in the draft act submitted in Appendix C, p. 145 of our First Report.

We again make this recommendation for the reasons stated in that report.

Special Justices.

For the reasons stated in our First Report, pages 52-53, we repeat the recommendation that all district courts serving a population of over 100,000 be provided with a third special justice. A bill for this purpose was printed in Appendix C of that report on page 147. Such a provision would not entail additional expense as special justices are paid only when actually rendering service.

MISCELLANEOUS MATTERS.**The Work of the Administrative Committee of the District Courts**

The Administrative Committee of the district courts was created by the legislature by St. 1922, c. 532, upon the recommendation of the Judiciary Commission. As pointed out in our report last year, much has been accomplished as a result of the work of this Administrative Committee in developing better administration among the different district courts through the regional conferences of the judges which are held each year and in other ways. A part of the work of this committee is shown by the circular letter to the judges (which we reprint in full in Appendix A) containing helpful suggestions as to procedure under the new criminal statutes.

Congestion of the Suffolk County Court House.

We repeat the opinion expressed last year (Report, p. 664), that "The present congestion in the Suffolk County Court House . . . is an obstacle to the administration of justice."

The Supreme Judicial Court.

The burden on the Supreme Judicial Court is growing heavier. The number of appeals during the past year has been greater than ever before and the indications for the coming year are for a possible further increase. We wish to consider the matter further.

Bail.

The Council has under consideration the subject of bail but is not yet prepared to report on the matter.

Declaratory Judgments.

In our First Report, we recommended the passage of a short statute of four lines providing for declaratory judgments (see Report, pp. 33-36 and Appendix, p. 142). There was also before the legislature a longer bill

of sixteen sections introduced by the Commissioners on Uniform State Laws. This bill was prepared by the National Conference of these Commissioners. In our report, we stated that we had considered this bill and that we were opposed to it. We are still opposed to a bill in that form. As stated in our previous report, we believe attempts to make court procedure uniform in all the states to be a mistake and one which is likely to obstruct progress. We still have this subject under consideration.

The Poor Debtor Law.

The Judicature Commission in its Report (H. 1205 of 1921, pages 48-51) discussed the practical workings of the Poor Debtor Law and suggestions for its improvement, and concluded with the recommendation that, "the whole subject be considered by the Judicial Council if it is created." A carefully drawn bill relating to this subject (Senate 518 of 1915) was passed by both houses to the enactment stage in the Senate where it was defeated by a vote of 18 to 12 in 1915. The Council has this subject before it.

Compensation for the Secretary of the Judicial Council.

Experience of two years has convinced the Judicial Council and all the members of it (except the secretary who has taken no part in this portion of this year's Annual Report) that their secretary ought to be a paid official of the Commonwealth.

This conclusion has not been reached because the present incumbent has not done the work and done the work well which must be done by the Council's secretary. On the contrary the Council has come to this conclusion because two years' experience has demonstrated to them that the work which has to be done by the secretary ought to be (as matter of policy and of justice) work for which compensation is made.

We think that no one can read the report of the Council made on November 30 last year and no one will read the report which is now being written and which will be sent to Your Excellency on the thirtieth of November of this year, without seeing that the work done by the secretary, of necessity, must have been extensive and burdensome. But while a perusal of these reports shows this, no one, who has not had the experience which the members of the Council have had, can appreciate the amount of work which has to be done by the secretary to get before the Council for due consideration the many matters taken up and disposed of by it at its fortnightly meetings during the year (except during the two summer months) and at its weekly meetings which have taken place each year immediately before the Report of the Council is sent to the printer.

For two years the secretary has done, and done well without compensation, this work which as a matter of policy and of justice ought to be done by a paid official, and we know of no other lawyer in the Commonwealth who would or could have devoted this vast amount of time without compensation to work *pro bono publico*.

It is enough, we think, to report to Your Excellency that in the opinion of the Council and of each member of it (apart from the secretary) the secretary of the Council should be a paid official of the Commonwealth. We suggest that the amount of his compensation should be determined by the Governor and Council.

An act to carry this into effect will be found in Appendix C, p. 116.

Statistics.

As in our First Report, we submit in Appendix B of this report various statistical tables.

One table shows the business of the Superior Court of the various counties for the year ending June 30, 1925, as reported to the Secretary of the Commonwealth. This supplements the similar table printed in our previous report for the year ending June 30, 1924. By permission of Hon. Frederic W. Cook, Secretary of the Commonwealth, we also print a similar table prepared by his office for the year ending June 30, 1926, in order to bring such statistical information, as nearly as possible, up to date in connection with this report.

The Appendix also contains the table of the business of all the district courts other than the Municipal Court of the City of Boston prepared by the Administrative Committee of the District Courts. This supplements the similar table in the Appendix in our last report for the previous year.

We also present certain summaries of the civil and criminal business of the Municipal Court of the City of Boston, supplementing those presented last year. By way of comparison with the civil business of this court prior to the adoption of the act of 1912, which abolished double trials on the facts under the old appeal system, we reprint the summary of the civil business for the year 1910 from the report of the Special Commission of 1912 (H. 1638 of 1912). This table shows that the total number of civil entries for the year 1910 was 14,771 as against 26,482 for the year 1925. It also shows that the number of civil appeals to the Superior Court in 1910 was 1,274. In 1925, with almost double the number of civil entries, the number of cases removed to the Superior Court under the act of 1912 was 1,263. The number appealed to the Superior Court because for some reason they did not come under the removal system was 17. Two cases were removed to the United States Courts.

Since July, 1926, the average weekly number of civil entries in this court has been about 500, but on Saturday, October 30, 1926, there were 792 original entries (the largest in the history of the court), and the late entries brought the total number for that week alone to 808.

In order to ascertain the practical workings of the removal system in the district courts throughout the Commonwealth and its relation to the business of the Superior Court, we have begun the accumulation of information relative to the history and disposition of removed cases in the Superior Court, but we have not yet accumulated sufficient information to report in detail. The figures as to removals should be compared with the number of cases begun in the Superior Court which are within the jurisdictional limits of the district courts in order to get the picture to be shown by the figures. We have not been able to make such a comparison.

In Suffolk County, 433 cases were disposed of at the special jury sessions held in July and September including a considerable number of removed cases. This reduced the October special trial list by about 400 cases.

No well-developed system of judicial statistics has yet been worked out for all the courts, but such tables as we print will give considerable information as to the volume and disposition of business in various branches of the judicial system.

WILLIAM CALEB LORING.
FRANKLIN G. FESSENDEN.
CHARLES T. DAVIS.
WILLIAM M. PREST.
FRANK A. MILLIKEN.
ADDISON L. GREEN.
ROBERT G. DODGE.
FREDERICK W. MANSFIELD.
FRANK W. GRINNELL.

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APPENDIX A.

I.

SPECIAL REPORT OF THE JUDICIAL COUNCIL IN ANSWER TO
A LETTER OF HIS EXCELLENCY THE GOVERNOR DATED
JANUARY 5, 1926.

(Printed as House 907.)

To His Excellency ALVAN T. FULLER, *Governor of Massachusetts.*

YOUR EXCELLENCY: — In answer to your request in a letter of January 5, we submit the following special report of the Judicial Council.

We are requested to furnish suggestions as to the best method for giving precedence to the trial of crimes of violence.

The lists of cases for trial at criminal sessions of the Superior Court are made up by district attorneys in the different districts under G. L., c. 278, § 1, which provides:

At each session of the superior court for criminal business, the district attorney, before trials begin, shall make and deposit with the clerk, for the inspection of parties, a list of all cases to be tried at that session, and the cases shall be tried in the order of such trial list, unless otherwise ordered by the court for cause shown. Cases may be added to such list by direction of the court, upon motion of the district attorney or of the defendant.

Many years ago the legislature adopted the plan of giving directions as to certain classes of cases for the guidance of the district attorney and of the court in the matter of the order in which cases should be tried, and these directions now appear in G. L., c. 212, § 24, which provides:

At a sitting of the court at which criminal business may be transacted, cases arising under chapters two hundred and forty-eight, one hundred and thirty-eight, one hundred and thirty-nine and two hundred and seventy-three shall have precedence in the order in which said chapters are herein named, next after the cases of persons who are actually confined in prison and awaiting trial.

The meaning of this statute is that the cases of persons who are held in prison without bail shall be placed first. The next class of cases (described by reference to G. L., c. 248) are petitions for the writ of habeas corpus. The next class of cases (described by reference to G. L., c. 138) are violations of the liquor law; these cases are now dealt with first on

the trial lists in the sessions of the Superior Court presided over by District Court judges, as these cases come within their jurisdiction. The next class (described by reference to G. L., c. 139) consists of common nuisances, and the next class (described by reference to G. L., c. 273) are cases of "desertion, non-support and bastardy."

We believe that the best method for giving precedence to the trial of crimes of violence is to amend section 24 by inserting after the habeas corpus cases (described by reference to G. L., c. 248) the references to the statutes covering crimes of violence. We submit the following amendment of section 24 for this purpose.

DRAFT AMENDMENT.

AN ACT TO GIVE PRECEDENCE TO THE TRIAL OF CRIMES OF VIOLENCE.

Be it enacted, etc., as follows:

SECTION 1. Section twenty-four of chapter two hundred and twelve of the General Laws is hereby amended by striking out the whole thereof and substituting the following:

Section 24. At a sitting of the court at which criminal business may be transacted, cases arising under chapter two hundred and forty-eight, and cases arising under sections one, thirteen to twenty-four inclusive of chapter two hundred and sixty-five, sections fourteen and seventeen of chapter two hundred and sixty-six, sections nine and ten of chapter two hundred and sixty-nine, section twenty-four of chapter ninety (as amended by chapter two hundred and ninety-seven of the acts of nineteen hundred and twenty-five) in so far as it relates to an offence of operating a motor vehicle while under the influence of intoxicating liquor committed within a period of six years immediately following final conviction of a like offence by a court or magistrate of the commonwealth, and in so far as it relates to a person who operates a motor vehicle upon any way and who without stopping and making known his name, residence and number of his motor vehicle, goes away after knowingly colliding with or otherwise causing injury to any person, shall have precedence next after the cases of persons who are actually confined in prison and awaiting trial, and thereafter cases arising under chapters one hundred and thirty-eight; one hundred and thirty-nine and two hundred and seventy-three shall have precedence in the order in which said chapters are herein named.

Signed by all the MEMBERS OF THE COUNCIL.

JANUARY 12, 1926.

II.

SPECIAL REPORT OF THE JUDICIAL COUNCIL AS TO THE ADMINISTRATIVE WORK OF THE SUPERIOR COURT.

(Submitted January 12, 1926.)

To His Excellency ALVAN T. FULLER, Governor of Massachusetts.

YOUR EXCELLENCY:—In connection with the current demand for more prompt and effective administration of justice we are of opinion that attention should be called to a matter of immediate and pressing importance in the operation of the judicial system.

The Judicature Commission in its report in 1921 (p. 85) suggested that "it may be found that the Chief Justice of the Superior Court will need the assistance of a secretary."

By St. 1924, c. 188, the legislature recognized this growing need and authorized the chief justice to appoint and define the duties of "an executive clerk to said Chief Justice, who may be an assistant clerk," and the budget of 1925 (St. 1925, c. 211, at p. 168) appropriated \$5,000 to cover the administrative expenses of the Superior Court described in G. L., c. 212, § 24, as amended by St. 1924, c. 188.

We are of opinion that an appropriation of \$5,000 is inadequate for the proper administrative work of the Superior Court of thirty-two judges, the great trial court for the whole Commonwealth, overwhelmed today by a great accumulation of cases on its docket which it has not been able to hear. This has been described in our First Annual Report at pp. 10-14.

The present appropriation has enabled the Chief Justice to secure (by using part of it) the efficient services (as executive clerk) of an assistant clerk of the Superior Court. But the services thus secured are all "overtime" work in addition to full time services by him as an assistant clerk of the court. The appropriation is not enough to provide what is needed for an efficient administration by the Chief Justice of the work of that court, namely, the full time of a man of the capacity, experience and willingness to work of the present executive clerk.

The court as a whole also needs the assistance which such a man can give to the justices and committees of the justices under the direction of the Chief Justice. In addition to the salary of such an executive clerk the court needs a sufficient margin of available funds at the disposal of the Chief Justice to meet the varying administrative needs of the court as they arise from time to time. All of these matters can be covered by an increase in the appropriation under G. L., c. 212, § 24, as amended by St. 1924, c. 188, the amount of which will be negligible when compared with the importance and value of the services secured.

In connection with this recommendation these facts should be understood.

In addition to his strictly judicial work of holding court and deciding cases as other judges do, the Chief Justice is charged (see G. L., c. 212, § 3) with the duty of making assignments for the 32 judges of the court for all the civil and criminal sessions in all the counties of the state. By St. 1923, c. 469, he has the duty of deciding when and where special criminal sessions shall be held to be presided over by district court judges, selecting and arranging for the attendance of district court judges to preside over them and seeing to it that jurors are summoned to attend. And this must be done so as to interfere as little as possible with the work of the district courts. The preparation of the schedules of time and place of services of the 32 Superior Court judges (with changes and special assignments needed from time to time on short notice) and of a varying number of District Court judges, is in itself an arduous task. In addition to this the Chief Justice must examine and certify all expense accounts of the judges sitting in the court and the salary allowance for the District Court judges when called in. He must appoint the Commission on Probation under G. L., c. 276, § 98. He has a large correspondence. He has tabulations made of the work of the court and its various branches and has to study them as the accounts of a business are studied by the man at the head of it. He is constantly engaged in conference with his colleagues, with attorneys and other persons who have occasion from time to time to call upon the court. In short, the Chief Justice has to keep in constant touch with the progress of his court and the needs of the public in every county in the Commonwealth.

No complaint of the work has been made to us. But in answer to an inquiry made by us the facts have been stated.

As the function of the Judicial Council is to study the operation of the judicial system we deem it our duty to call attention, at this time, to the way in which the operation of the system affects the responsible administrative head of the great trial court of the Commonwealth and to express our opinion that immediate relief is necessary. The underlying basis for securing an efficient administration of a court is to give to the Chief Justice, who is the responsible head of it, all the assistance he can use to advantage and let him keep his strength for directing the administrative work of the office and for doing his judicial work on the bench. It is bad economy to allow such an officer with a strong sense of the responsibility of his position to drive himself to the breaking point for lack of funds to secure adequate assistance for his "overtime" work. The position of Chief Justice not only requires such assistance now and in future but it has been allowed to go on too long already without it.

Signed by all the MEMBERS OF THE COUNCIL.

JANUARY 12, 1926.

III.

SPECIAL REPORT OF THE JUDICIAL COUNCIL AS TO EXPEDITING THE DECISION OF QUESTIONS OF LAW IN CRIMINAL CASES.

(Printed as House 1167.)

FEBRUARY 24, 1926.

To His Excellency ALVAN T. FULLER, *Governor of Massachusetts.*

YOUR EXCELLENCY:—The time now taken in getting a final decision on questions of law in criminal cases is far too long. This is a serious defect in the administration of the criminal law in Massachusetts and there ought to be no delay in bringing it to an end.

Of the 488 cases before the full bench of the Supreme Judicial Court in the year ending September 1, 1924, there were 31 on the criminal side of the court. In these 31 cases the average time between the verdict of guilty in the Superior Court and the rescript of the Supreme Judicial Court disposing of questions of law which had been raised in the 31 cases was 13 and 4/31 months.

But among these 31 cases there were 5 in which (for one reason or another) more than the usual time was taken between verdict and rescript; and there were 3 of them in which a speedy decision was imperative and less time than usual was taken. Excluding these 8 and confining the statement to the 23 ordinary cases the average time between verdict and rescript was a little less than 11 in place of a little more than 13 months.

An analysis shows that the 11¹ months were taken up in the following way:

	Months.	Months.	Months.
Between conviction and rescript	—	—	nearly 11
Between conviction and allowance exceptions	—	6½	—
Between allowance exceptions and argument nearly	3	} 4½	11½
Between argument and rescript	1½		

Nearly 11 months between verdict and rescript is much too long. Of that there can be no question.

While 31 cases appealed to the Supreme Judicial Court is not a large number when compared with the whole number of criminal cases yet that

¹ In making this and the following computations a month was taken as the unit. For example, if an event happened on January 1 and the next event happened on February 28 the elapsed time was one month, and the elapsed time was one month where the first event took place on January 31 and the next event on February 1. This method of computation has resulted in certain obvious discrepancies.

number is apt to include cases involving serious offences, and delays in such cases furnish material for much public misunderstanding of the administration of justice.

It is not necessary to restate the necessity of certainty and celerity in punishment if punishment is to serve as a deterrent to crime. Your Excellency referred to it in your annual message and it was spoken of by the Judicial Council in its first annual report.

The cause of the $6\frac{2}{3}$ months in getting the record completed for entry in the Supreme Judicial Court does not appear on the face of the matter. But when the condition is considered it is plain that it is due principally to a defect in the system now in use.

The defect in the system consists in the fact that criminal cases would not be heard earlier were the records completed more quickly. Under these circumstances it is inevitable that the record for the Supreme Judicial Court is not completed promptly. In the practice of the law things get done when they have to be done and not before. There are always in practice more things waiting to be done than the busy lawyer can attend to readily. What the lawyer who is not busy does may be disregarded.

Criminal cases which go to the Supreme Judicial Court on questions of law are divided by Massachusetts statute into two classes, namely, those arising in cases in the six counties for which the court for the Commonwealth sits, namely, Suffolk, Middlesex, Norfolk, Essex, Plymouth and Barnstable; and those in the other eight counties, namely, Berkshire, Franklin, Hampshire, Hampden, Worcester, Bristol, Dukes County and Nantucket. There is one law sitting each year of the court for the Commonwealth. It begins on the first Wednesday of January and is "adjourned to places and times most conducive to the despatch of business and to the interests of the public." For hearing and determining any questions of law arising in the other eight counties the Supreme Judicial Court is required by statute to go on circuit in September and October of each year and hold sittings in each of these counties, with the limitation that in two instances the full court sits in one county for two or more of them. By a recent act (St. 1920, c. 386) the Supreme Judicial Court is now authorized to sit in these outside counties "at such times [in September and October] as the court shall by rule determine."

Acting under the authority given it the law sittings of the full court are now as follows: On the third Tuesday of September at Pittsfield, on the following day at Greenfield or Northampton (for Hampshire and Franklin) and on the following day or two days in Springfield; on the Monday after the third Tuesday of September at Worcester; on the third Monday of October the court for the Commonwealth sits for a week in Boston, and on the fourth Monday of October the full court sits on circuit at Bristol; beginning with the second Monday of November the court for the Commonwealth sits at Boston for two weeks in that month,

two weeks in December, three weeks in January and four weeks in March.¹

Where the full court sits in an outside county it sits for hearing questions of law arising "in the county in which the sitting is held," with a limitation set forth in G. L., c. 211, § 13, not here material.

The sitting of the court for the Commonwealth is held for hearing and determining "questions of law arising" in the six counties enumerated above, "and by consent of parties filed in the case such questions in other counties."²

Under the system now in use delay is secured by raising questions of law in criminal cases in the eight outside counties and to a lesser degree in those in the six counties for which the court for the Commonwealth sits.

For example, if a question of law (upon which there is a reasonable doubt)³ arises in a criminal case tried in Berkshire, Hampshire, Franklin or Hampden after the full court has held a law sitting in one of these counties in September, the question of law is not in the ordinary course of events heard by the full bench until September of the following year; and the same is true of criminal cases tried in Worcester and Bristol after October. Going still further the same is true to a lesser degree in criminal cases tried in Suffolk, Middlesex, Essex, Norfolk, Plymouth and Barnstable; questions of law (upon which there is a reasonable doubt) arising in criminal cases tried in those counties after February 1 will hardly get on the list of the court for the Commonwealth for its adjourned March sitting, and if they do not get on that list they go over until the following October, and if not reached in the one week sitting held by the court for the Commonwealth in that month, they go over until November.

The matter of securing a more speedy decision by the appellate court of questions of law in criminal cases is a matter to which the Judicial

¹ The court sits in consultation on Monday before the second Tuesday of September, the first Monday of October, fourth Monday of November, the Monday before the first Wednesday of January, the Tuesday after the fourth Monday in February, in March "at close of law arguments," on the third Monday of May and on the third Monday of June. These consultations (with the exception of the consultation "at the close of the law arguments" in March) last a week.

² In addition it is provided by G. L., c. 211, § 14, that "upon application of a party the full court may order any . . . questions of law or case or matter to be entered and determined by the full court sitting in any county or for the commonwealth." But in practice the court is rarely called upon to exercise the authority thus given, presumably because out of consideration of fairness to all litigants cases put upon the list of the court of the Commonwealth are not taken up until cases arising in the six counties for which the court of the Commonwealth sits are disposed of; and parties in cases in the six counties for which the court for the Commonwealth sits rarely ask to have their cases transferred to sittings of the court on circuit in one of the eight outside counties. Again, in addition, exceptions alleged at the trial of capital cases in any of the eight outside counties may be entered and determined either at the law sitting of the Supreme Judicial Court for the county in which the case arose or "upon order of the justice presiding at the trial at the sitting of the court for the commonwealth." G. L., c. 211, § 15.

³ Unless the presiding justice certifies to reasonable doubt the execution of a sentence is not stayed by exceptions. G. L., c. 279, § 4.

Council has given much consideration. It is obvious that for expediting such decisions the choice lies between amending the present system so as to secure a more prompt decision of such cases by the Supreme Judicial Court or creating a separate court of appeal for hearing and determining such questions of law; for example, an appellate criminal division of three judges of the Superior Court.

The advantages of a small separate court of criminal appeal which would have a short docket are obvious.¹ Such a court could be quickly assembled when enough cases were ready for hearing; less formality would be necessary in making up the record for three judges only and for three judges of the trial court; the cases would be reached and heard without the delay incident to the hearing and decision of criminal cases which are less in number than 7 per cent of all the cases on the docket of the court; and a decision ought to be reached in them more promptly than is possible when they are 31 or 39 in number on a docket of 488 or 526 cases in all.

On the other hand, the creation of a Superior Court of criminal appeal with a provision that its decision is to be final under all circumstances or final subject to a limited right of appeal in some of the cases before it is as radical a departure from the traditions of the Massachusetts judiciary as can well be imagined. And to that it must be added that the Superior Court is today in such a condition that experiments in its organization and work ought not to be tried at the present time. It has a badly congested docket to deal with;² with the two judges added this year it has now thirty-two full-time judges, and it has to rely on the services of judges called up from the District Courts to help in preventing a further increase in the congestion in its docket. And lastly, the creation of a Superior Court of criminal appeal ought to be considered in connection with or as part of a possibly more extensive reorganization of the judicial system of the Commonwealth. A reorganization of the whole judicial system of the Commonwealth is a matter which the Judicial Council is not prepared to deal with at the present time.

On the other hand, the Council hesitates to make any suggestions which add to the burdens of the Supreme Judicial Court. The Supreme Judicial Court as the court of final resort has been working for many years and is working today under great pressure, but to great advantage in hearing and determining questions of law. With three exceptions only it has finished its docket year in and year out for twenty-seven years,

¹ There were 31 criminal cases out of 488 on the docket of the Supreme Judicial Court in the year ending September 1, 1924, and 39 out of 526 on its docket for the year ending September 1, 1925.

² In the year ending June 30, 1925, although the Superior Court succeeded in preventing further congestion in its criminal docket it went behind in its docket as a whole. At the end of that year there were 2,728 more cases on the whole docket than there were at the end of the year preceding.

and the exceptions in which the docket was not finished have been overcome. Doubtless that record goes further back, but so much is within the memory of those now living. This has been accomplished by great effort and (as we have said) we hesitate to add or to seem to add to the burdens of the court. But to anticipate the effect of the recommendation which we are about to make, our suggestion does not put additional work upon the court. It consists only in securing more prompt disposition of less than 7 per cent of the work which the court now has.

Whatever difference of opinion may exist as to what ought to be done, there can be and so far as we know there is no difference of opinion as to the necessity of something being done and done without delay to bring to an end the defect in the administration of justice in Massachusetts, which comes from the fact that ordinarily it takes eleven months to get a final decision upon a question of law (arising in a criminal case) as to which there is a reasonable doubt.

Under these circumstances the Judicial Council recommends that a statute should be enacted providing that questions of law arising in criminal cases should be entered in the court for the Commonwealth or in the court for the county in which the case was tried, whichever has the earlier sitting after the exceptions are allowed, the appeal taken or the report signed. And they suggest that the court for the Commonwealth should hold an adjourned sitting at the end of June for hearing and determining questions of law in criminal cases.

In 1925 (by St. 1925, c. 279) a speedy method was adopted of carrying questions of law to the full court in proceedings or trial upon an indictment for murder or manslaughter. The Council recommends that a justice of the Superior Court presiding at a proceeding or trial upon an indictment or upon a complaint for any other offence should be given authority to make that act applicable to the proceeding or trial in question. There are great delays in complying with the present practice as to drawing up bills of exceptions. In that connection the Council suggests that it is worth while to provide that in drawing a bill of exceptions in criminal cases the defendant be allowed to use the stenographic report (where the evidence has been taken by a stenographer) without change, except when and so far as the defendant's counsel and the district attorney agree that a portion of the evidence set forth in the report is not material.

A draft of an act to carry these recommendations into effect is annexed.

When there is an original indictment for manslaughter only the case may or may not be a particularly serious one. In the opinion of the Council the procedure brought into being by St. 1925, c. 279, ought not to apply to cases of manslaughter unless the presiding justice so directs. A change to that effect has been made in the draft act hereto annexed.

Signed by all the MEMBERS OF THE COUNCIL.

AN ACT TO EXPEDITE THE DECISION OF QUESTIONS OF LAW IN CRIMINAL CASES.

(Annexed to the foregoing Special Report of February 24, 1926.)

SECTION 1. Section seven of chapter two hundred and eleven of the General Laws is amended by inserting at the beginning thereof the words: — Questions of law in criminal cases which are entered upon the docket of the full court shall be argued in their order unless the court for cause directs otherwise before any civil cases are argued and thereafter, — and by the insertion of the words: — in civil cases, — before the words “which are entered”, — so that the whole section shall read as follows: — Questions of law in criminal cases which are entered upon the docket of the full court shall be argued in their order unless the court for cause shown directs otherwise before any civil cases are argued and thereafter questions of law in civil cases which are entered upon the docket of the full court shall, when reached, be argued in their order if either party is ready, unless the court for good cause shown postpones the argument. But no party shall be compelled to be ready for argument within ten days after the question has been duly reserved of record in the court in which the case is pending.

SECTION 2. Section twelve of chapter two hundred and eleven of the General Laws is amended by inserting after the words “at such sitting” the words: — questions of law in criminal cases arising in any county in the commonwealth and, — and by inserting the words: — in civil cases, — before the words “arising in the counties of Barnstable”, — and again before the words “arising in other counties”, — so that the whole section shall read as follows: — A law sitting of the court for the commonwealth shall be held annually at Boston on the first Wednesday of January and may be adjourned to places and times most conducive to the despatch of business and to the interests of the public. At such sitting questions of law arising in criminal cases in any county in the commonwealth and questions of law arising in civil cases in the counties of Barnstable, Essex, Middlesex, Norfolk, Plymouth and Suffolk, and, by consent of the parties filed in the case such questions in civil cases arising in other counties and such questions for which no other provision is made, shall be entered and determined.

SECTION 3. Section thirty-two of chapter two hundred and seventy-eight of the General Laws is amended by adding at the beginning thereof the following: — Appeals, exceptions or reports shall be entered by the defendant within ten days after the appeal is taken, the exceptions are allowed or the report is signed, at the next law sitting of the supreme judicial court for the county in which the case is pending or at the sitting including an adjourned sitting of the court for the commonwealth, whichever comes first after the appeal is taken, the exceptions are allowed or the report is signed, — and by the insertion of the following words before the words “or neglects”, to wit: — within said ten days, — and by striking out the words “the superior court may, upon application of the district attorney and after notice, order that the appeal, exceptions or report be dismissed and that the judgment, opinion ruling or order appealed from, excepted to or reported be affirmed” and substituting therefor the words: — The appeal, exceptions or report shall be dismissed by the superior court as matter of course unless further time is granted by a justice of the supreme judicial court and the judgment, opinion, ruling or order appealed from excepted to or reported be affirmed, — so that the

whole section shall read: — Appeals, exceptions or reports shall be entered by the defendant within ten days after the appeal is taken, the exception is allowed or the report is signed at the next law sitting of the full court of the supreme judicial court for the county in which the case is pending or at the sitting including an adjourned sitting of the court for the commonwealth, whichever comes first after the appeal is taken, the exceptions are allowed or the report is signed. If the defendant neglects to enter his appeal, exceptions or report in the supreme judicial court within said ten days, or neglects to take the necessary measures for hearing of the cause in the supreme judicial court, the appeal, exceptions or report shall be dismissed by the superior court as matter of course unless further time is granted by a justice of the supreme judicial court and the judgment, opinion, ruling or order appealed from, excepted to or reported be affirmed.

SECTION 4. Section thirty-three A of chapter two hundred and seventy-eight of the General Laws is amended by inserting at the beginning thereof these words: — This section and sections thirty-three B to thirty-three G, inclusive, shall apply to any proceedings or trial upon an indictment for murder or upon an indictment or complaint for any other offense brought within this act by an order of a justice of the superior court under the following authority: a justice of the superior court presiding at any proceedings or trial upon an indictment or complaint for any offense may enter an order directing that the proceeding or trial in question shall be governed by sections thirty-three A to thirty-three G. And sections thirty-three A and thirty-three B are amended by striking out the word "manslaughter" in the fifth line of section thirty-three A and in the second line of section thirty-three B and substituting therefor the words: — upon an indictment or complaint for any other offense brought within sections thirty-three A to thirty-three G, inclusive, by an order of a justice of the superior court. Section thirty-one, as amended by section two of chapter two hundred and seventy-nine of the acts for the year nineteen hundred and twenty-five, and section fifteen of chapter two hundred and eleven of the General Laws, as amended by section five of said chapter two hundred and seventy-nine, are amended by striking out the word "manslaughter" wherever it occurs in said sections and substituting for it the words: — a case brought within sections thirty-three A to thirty-three G, inclusive, by an order of a justice of the superior court. And said section thirty-one is further amended (1) by striking out the words "five days except by consent of the district attorney is allowed by the court", and by inserting in place thereof: — ten days is allowed by the presiding justice, except that for cause shown and specified in the order the presiding justice may within said ten days grant an extension of time specified in the order, in no event exceeding twenty days more, and except further upon application made to him in writing setting forth an emergency which has arisen, the chief justice may grant a further extension of time provided the application aforesaid is made within the maximum period of time hereinbefore set forth, — and (2) by the insertion of the following words before the words "the clerk immediately", namely: — in reducing exceptions to writing the defendant shall be at liberty to state the evidence in the case as it is set forth in the stenographic report (where the evidence has been taken by a stenographer) without change except when and so far as the district attorney and the defendant's attorney agree in writing that a specified portion is not material. Errors in the stenographic report of the evidence seasonably called to his attention shall be

corrected by the presiding justice, — so that said section thirty-one shall read as follows: — *Section 31.* Exceptions may be alleged by a defendant in a criminal case who is aggrieved by an opinion, ruling, direction or judgment of the superior court rendered upon any question of law arising at the trial of such case or upon a motion for a new trial but not upon a plea in abatement; provided, that exceptions alleged in any proceedings or trial upon an indictment for murder or upon an indictment or complaint for any other offense brought within sections thirty-three A to thirty-three G, inclusive, by an order of a justice of the superior court shall be governed by sections thirty-three A to thirty-three G, inclusive, and no bill of exceptions shall be entered or considered in the supreme judicial court in any such proceedings or trial. The exceptions shall be reduced to writing and filed with the clerk and notice thereof given to the commonwealth within three days after the verdict or after the opinion, ruling, direction or judgment excepted to is given, unless a further time, not exceeding ten days, is allowed by the presiding justice, except that, for cause shown and specified in the order, the presiding justice may within said ten days grant an extension of time specified in the order, in no event exceeding twenty days more, and except, further, upon application made to him in writing setting forth an emergency which has arisen the chief justice may grant a further extension of time, provided the application aforesaid is made within the maximum period of time hereinbefore set forth. In reducing exceptions to writing the defendant shall be at liberty to state the evidence in the case as it is set forth in the stenographic report (where the evidence has been taken by a stenographer) without change except when and so far as the district attorney and the defendant's attorney agree in writing that a specified portion is not material. Errors in the stenographic report of the evidence seasonably called to his attention shall be corrected by the presiding justice. The clerk immediately upon the filing of the exceptions shall present them to the court, and if upon examination thereof by the presiding justice they are found conformable to the truth, they shall be allowed by him. In all cases the district attorney shall have an opportunity to be heard concerning the allowance of such exceptions. The provisions of sections one hundred and fifteen to one hundred and seventeen, inclusive, of chapter two hundred and thirty-one, so far as appropriate, shall apply to exceptions taken in criminal cases.

SECTION 5. This act shall take effect on September first, nineteen hundred and twenty-six.

IV.

CIRCULAR LETTER OF THE ADMINISTRATIVE COMMITTEE OF
THE DISTRICT COURTS, CREATED BY ST. 1922, C. 532.*Commonwealth of Massachusetts*

ADMINISTRATIVE COMMITTEE OF DISTRICT COURTS.

AUGUST 25, 1926.

To the Justices and Special Justices of the District Courts:

The Administrative Committee planned a series of regional conferences for the late spring but circumstances beyond our control compelled a change in our program. We shall however hold these conferences the coming fall and early winter. In this letter we desire to briefly call your attention to certain matters which we intend to discuss further at the coming conferences.

ORDER WHERE SENTENCE IS FOR MORE THAN SIX MONTHS.

There seems to be doubt as to just what form of order should issue in cases in which the sentence is for more than six months, the defendant, at the time of the original imposition of the sentence, not claiming an appeal. There is no doubt the sentence can be imposed by the Court but no order can be issued requiring the sentence to be executed until the twenty-four hours have elapsed. The defendant therefore remains in the custody of the Court upon the original bail or upon bail which may be fixed by the Court at the time of the sentence. The practical effect is merely a statement on the part of the Court that the defendant will be sentenced for a period in excess of six months. If the defendant then and there takes an appeal the matter is closed. If he does not it remains open until he has had the opportunity later on as given in Chapter 218, Section 31 of the General Laws.

Where it is necessary to issue an order of commitment the Committee suggests that the ordinary order or warrant be changed by inserting in an appropriate place the following paragraph —

The said sentence being one of more than six months, the said defendant not then and there claiming an appeal to the Superior Court, the said defendant is then and there ordered by said Court to be committed to the jail in said , there to await commitment upon said sentence until the day of current at nine o'clock in the forenoon, and upon the last-named day and hour to be brought before said Court and then and there to be committed upon the sentence above-named or to appeal therefrom.

NOTICE TO DEFENDANTS ON WRITS AND SUMMONS.

It has been suggested to the committee that many defendants in civil actions come to the Court Room on the return day not understanding that they have an opportunity to appear and file an answer, either in person or through attorney at a later date. In one of the Courts it has been found very effective to have printed upon the writ and summons the following:

NOTICE TO DEFENDANTS.

You need not appear personally in Court on the Saturday designated, but if you claim to have a defense you must file in the Clerk's Office an answer in writing on or before the succeeding Wednesday, else judgment is liable to be entered by default.

It seems to the Committee that like action by all the Courts might facilitate matters and give to defendants information which they are really entitled to receive.

APPEAL IN DELINQUENCY CASES.

The question has arisen as to the right of appeal in delinquency cases and it appears that there is a difference in procedure on the part of the several Courts. The Committee is of the opinion that the appeal is the right of the child and not of any other person. *Robinson v. Commonwealth*, 242 Mass. 401.

. . . that the appeal is from the adjudication of delinquency and there is no appeal at any later time even if there should be an order of commitment at such later time. As a matter of practice the child should be notified of the right to appeal when the adjudication of delinquency is made and this right should likewise be extended to the parent.

CIVIL CASES.

Your Committee has received an increasing number of complaints of delay in decisions of civil causes on the part of Justices and Special Justices alike. Parties and counsel are entitled to decisions without unreasonable delay. We are confident this word will serve to stimulate the Justices to prompt decisions.

DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

The law is for the most part being well administered but cases continue to be reported to us where second offenders are punished by fine only

in clear violation of the mandate of the Legislature. This has happened where the defendant has been twice before the same Court and in such cases there would seem to be no excuse. We feel that each individual Justice owes an obligation to the public and to fellow Justices to exercise the greatest care on his own part and to require such of other Court officials in cases of this character. Moreover we have to frankly say that we believe any Justice is wrong in his judgment who, having any reasonable cause to believe the defendant is a second offender, fails to impose the jail sentence which is provided even for first offenders. Technical failures in proof may require a finding of "Guilty of first offence only," but that should not place a defendant automatically within the class of first offenders for whom a fine is the generally accepted penalty. A seemingly eager grasping for a legal reason for a fine rather than imprisonment will be interpreted by the public as a disregard of the law and will not help to restore any impaired confidence in the Courts.

COMMITMENTS TO PENAL INSTITUTIONS AND TRAINING SCHOOLS.

It seemed wise and likely to be mutually beneficial for the Committee to visit the various penal institutions and the training schools of the state and after conference with the executives thereof to pass on to you any recommendations with reference to the types to be committed to each of such institutions. Accordingly we have visited the penal institutions but have not yet inspected the training schools. We desire to make certain suggestions with reference to the types to be committed to each such institution in order that there may be better knowledge on the part of the Justices of the especial value of each particular institution and also that the institutions themselves may not be burdened or hampered by the commitment of individuals for whom there are no especial advantages or benefits to be obtained by such commitment to that particular institution.

We desire first to state that we have made a very thorough examination of the Reformatory for Men at Concord and that we find no evidence whatever to sustain the criticisms and rumors which have been so prevalent throughout the state as to the moral conditions therein. In our judgment there need be no hesitation in committing to this institution defendants for whom the institution can offer any reformatory service.

For both the Reformatory for Women at Sherborn and the Reformatory for Men at Concord we recommend that the following be the guiding principles in commitments:

Age. — As a rule not under 17 years nor over 30.

Mentality. — Borderline cases of feeble-mindedness or insanity should be committed to other institutions such as the feeble-minded schools or insane hospitals.

Previous History. — If the prisoner has a record of repeated arrests and imprisonment elsewhere, it is not desirable to commit to either reformatory. If the person has a record of other arrests but not of imprisonment and there seems to be a fair chance of reformation under the conditions furnished by the reformatories, exception can be made in such cases.

Second Commitments. — While no fixed rule can be laid down as to commitments for a second time, it is recommended that inquiry be addressed to the reformatory to obtain the judgment of those in charge as to whether another sentence will be of reformative value before again committing the offender to the institution.

We desire to commend the administration of both of these institutions. It seems to us to be sane, intelligent and to have in mind both the interests of the defendants and of the public.

To the State Farm (General Departments) the types properly committed are fairly well established and we have no suggestions to make. Care however has not always been taken to report to the Parole Board in the cases of men on parole from the Farm. Information of violation of such parole should be forwarded and the case be held open for sentence until word is received in reply.

DEFECTIVE DELINQUENTS.

The establishment of the Defective Delinquent Department has furnished an opportunity for the commitment of a certain type for which there seemed to be no adequate provision. Commitments to this department should be strictly in accordance with the terms of the statute and departmental regulations which are in substance as follows: —

- (1) There must have been a prior conviction for an offence within three years.
- (2) The age limits are 17 to 25 inclusive.
- (3) Defendants must be feeble-minded.

An investigation of this department's facilities, methods of training and the delinquents now in custody compels our strongly recommending strict adherence to the statute and regulations. Mere feeble-mindedness or delinquency is not alone sufficient to warrant commitment.

TRAINING SCHOOLS.

As to the training schools and for the present we make the following suggestions only: —

- (1) The age of the boy or girl should be stated clearly in the mittimus.
- (2) If the boy or girl is committed on the revocation of a suspended sentence and is over age for commitment, the fact of the revocation of the suspended sentence should be stated on the mittimus.
- (3) Truancy and waywardness are not, according to the statute, legal grounds for commitment to the training schools.

Blank mittimi will be supplied, if requested, by the Executive Secretary of the Training Schools, 41 Mt. Vernon St., Boston.

ACTS OF 1926.

The past year has witnessed a continuation of the discussion of crime, criminals and the relation of the Courts thereto. The minute and careful study of the Judicial Council led to certain suggestions which ultimately were presented by the Governor to the Legislature. The Registrar of Motor Vehicles has continued his advocacy of changes in procedure and increasing severity of punishment and bills were filed embodying his ideas in the field of automobile regulation as well as in the larger field.

Your committee attended the hearings held by the Judiciary Committee where there was full discussion relevant and irrelevant. We were not able to agree with much of what was said at these hearings nor could we see the necessity of some of the proposed measures. In this connection we commend to your reading and study the May number of the Massachusetts Law Quarterly. Nevertheless it is our duty to support laws as enacted and enforce them in a spirit of strict compliance with the will of the people thus expressed. We list these measures enacted into laws of special interest to us and comment on each. They will become effective on September 1, 1926.

CHAPTER 203 amends General Laws, chapter 226, section 63, by providing that motor vehicles shall not be included in the law relative to punishment for the unlawful taking of boats, vehicles and animals.

CHAPTER 227 authorizes amendments of complaints upon motion of prosecuting officer. Complaints may be amended in relation to allegations or particulars as to which the defendant would not be prejudiced in his defense.

CHAPTER 230. — An Act relative to the punishment for non-appearance of a person duly summoned as a witness in a criminal case.

Comment. — This Act provides a fine of not more than two hundred dollars or imprisonment for not more than one month, or both, for failure to attend as a witness before the Court, etc. Its usefulness will of course depend upon the extent to which witnesses fail to obey summons. We have no knowledge as to how prevalent such practice is.

CHAPTER 253. — An Act making knowledge a necessary requirement in the offence of using a motor vehicle without authority.

Comment. — The words "knowing that such use is unauthorized" have been added to section 24 of Chapter 90 as amended by chapter 183 of the Acts of 1924 and by section 3 of chapter 201, and section 1 of chapter 297, both Acts of 1925. This provision apparently throws an added burden upon the Commonwealth.

CHAPTER 266. — An Act relative to the arrest of persons still on probation.

Comment. — This Act will require the probation officer in all cases except of drunkenness to arrest a person who is still on probation and has violated the terms thereof, and to bring him before the Court for appropriate disposition of his case. What lies back of this Act is undoubtedly the criticism which has been often expressed of repeated probation and of the failure of probation officers to bring men before the Court for violation of their respective terms. The burden is of course upon the probation officer but we urge the Justices to bear in mind in passing upon such cases the reason for the enactment of this statute.

CHAPTER 267. — An Act relative to the punishment of certain motor vehicle crimes.

Comment. — This Act adds certain language to the statute with reference to the stealing of automobiles or the concealment of machines stolen as found in section 28 of chapter 266, G. L., the language being in substance as follows: — "Or takes an automobile or motorcycle without the authority of the owner and steals from it any of its parts or accessories, or without authority of the owner operates an automobile or motorcycle after his right to operate without a license has been suspended or after his license has been suspended or revoked and prior to the restoration of such right or license to operate or without issuance to him of a new license to operate." The maximum penalty is increased from five to ten years in State's Prison or (and) from one year to two and one-half years in jail or House of Correction. This means of course that the District Courts do not now have final jurisdiction in such cases and where probable cause is shown they should be transmitted to the Superior Court in the usual way.

Section 23 of CHAPTER 90 is also amended by using substantially the language above quoted beginning "After his license to operate has been suspended or revoked, etc." Care should be exercised in any case under

this section to note that the penalty prescribed by the amended section 28 of chapter 266 must be imposed in cases where the operation of the automobile is not only while the operator is unlicensed but where such operation is without the authority of the owner.

CHAPTER 271. — An Act relative to probation, suspended sentences and filing of complaints in District Courts.

Comment. — In substance this Act so amends the existing law that no defendant may be placed on probation, no sentence may be suspended and no complaint filed if it shall appear that the defendant has been previously convicted of any felony. The word "felony" is interpreted in General Laws, chapter 274, section 1. In our judgment it is extremely important that this law should be clearly in the minds of the Justices and the requirements rigidly carried out.

CHAPTER 320. — An Act relative to the criminal records of offenders against the laws of the Commonwealth.

Comment. — The first section of this chapter requires that before the amount of bail of a prisoner charged with an offence punishable by imprisonment for more than one year is fixed in Court, the Court shall obtain from its probation officer all available information relative to prior criminal prosecution, if any, of the prisoner, and to the disposition of each such prosecution. This provision is likely to prove difficult of administration. A defendant is entitled to have bail established in Court and it will not be always easy or possible to obtain the information apparently required. The principal sources of information already available are the records of the Probation Commission and identification through finger prints. Inquiries in these two directions will take time. Under the circumstances, the word "available" will have to be construed in the broadest sense and each magistrate in each case so act as to meet the requirements of the law in such a manner as is most practicable.

Section 2 imposes added burdens upon the probation officer. He is absolutely required in addition to the duties heretofore imposed upon him in the case of a criminal prosecution charging a person with an offence punishable by imprisonment for more than one year to present to the Court such information as the Commission on Probation has in its possession relative to prior criminal prosecutions of such person, the disposition of such prosecutions and all other available information relative thereto before such person is admitted to bail in Court and also before disposition of the case. The other detailed duties need not be enumerated here.

Section 3 of said Act also imposes added responsibilities with reference to transmission of records by the Probation officer.

Section 4 requires the Court before disposition by sentence or placing on file or probation of any criminal prosecution for an offence punishable by imprisonment for more than one year to obtain from its probation offi-

cer all the available information relative to prior criminal prosecutions and the disposition thereof.

The Commission on Probation has already issued full instructions for probation officers which should now be in the hands of all such officers. We shall hope to develop with your assistance some form of procedure which will enable us to carry out the terms of this Act without the delays and expense which will be at first unavoidable.

CHAPTER 340 should be thoroughly discussed by each Justice with the Clerk as it makes important changes in the law with respect to the taking of bail.

CHAPTER 361 is a new law dealing with the use of a motor vehicle in connection with the commission of a felony, of a larceny and certain other offences. The obligation is upon the clerk to report forthwith to the Registrar of Motor Vehicles the material facts relative to such use.

It is apparent from the foregoing summary that the records of the Probation Commission kept at Boston are to be of essential importance to all the Courts. A report made to your Committee by this Commission indicates that of the District Courts, 26 have been making full use of the bureau maintained by the commission, 7 have been inquiring but not to the full extent to be expected, 11 have inquired very rarely, 28 have never inquired. Two of the Courts only have not been sending in daily records. Your Committee earnestly recommends the fullest co-operation with the Probation Commission both in transmitting records and in making inquiries.

DEFENDANTS ON PAROLE.

We urge the Justices to comply with the request of the Department of Correction that they ascertain if possible whether a defendant is on parole from one of the state institutions and if so that immediate notification be given to the Department of Correction no matter how trivial the offence or what the disposition may have been.

APPELLATE DIVISIONS.

The Appellate Divisions have been increasingly busy. It seems clear that this experiment will become fixed in our Judicial system. Care in the trial and reporting of cases on the part of the attorneys and the Justices will be helpful in furthering the practice as well as assisting the Justices assigned to this work.

The attention of Justices is called to the following cases:

Sawsik v. Ciborowski, Banker & Tradesmen, July 24, 1926.

Massachusetts Drug Co. v. Bencks, Tradesmen, July 24, 1926.

Adv. Sheets 1505 and 1583.

JUDICIAL COUNCIL.

The Judicial Council are investigating what statutory changes are necessary, if any, to expedite the disposition of minor violations of the Motor Vehicle Law and ordinances. Suggestions from the Justices are invited.

FRANK A. MILLIKEN,
JAMES W. McDONALD,
CHARLES L. HIBBARD,
Administrative Committee.

APPENDIX B.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1925, IN COMPLIANCE WITH CHAPTER 221, SECTION 24 OF THE GENERAL LAWS, AS AMENDED BY CHAPTER 131 OF THE ACTS OF 1924 (NATURALIZATION BUSINESS NOT INCLUDED).

(Reprinted from Report of Secretary of the Commonwealth for the year ending November 30, 1925. P. D. 46, page 17.)

COUNTIES.	NUMBER PENDING AT BEGINNING OF YEAR.				NUMBER ENTERED DURING YEAR.				NUMBER ACTUALLY TRIED.				NUMBER DISPOSED OF BY AGREEMENT OF PARTIES OR BY ORDER OF COURT.					
	CIVIL CASES.				CIVIL CASES.				CIVIL CASES.				CIVIL CASES.					
	Jury.	Jury Waived.	Equity.	Divorce.	Criminal Cases.	Jury.	Jury Waived.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.	
Barnstable	107	47	27	22	41	70	35	8	1	17	4	-	6	7	49	24	5	2
Berkshire	265	126	126	45	85	169	53	32	3	12	11	2	2	8	94	58	9	3
Bristol	1,392	379	414	209	783	734	211	121	1	152	35	47	6	60	541	198	8	5
Dukes	12	9	2	7	1	11	19	5	3	-	-	-	2	2	1	12	-	-
Essex	3,529	524	648	307	1,118	1,934	376	261	13	155	41	29	19	277	1,151	352	345	5
Franklin	239	87	192	32	28	121	48	23	3	50	9	12	8	11	197	49	16	8
Hampden	2,421	817	708	394	671	1,095	437	212	392	134	31	5	261	34	960	397	300	12
Hampshire	199	93	91	37	91	119	64	16	7	39	8	-	2	62	101	44	9	1
Middlesex	5,694	1,229	1,835	487	947	3,126	741	386	92	476	76	16	89	643	2,440	652	1,435	5
Nantucket	4	6	2	-	1	2	9	3	-	-	-	-	-	-	-	3	-	-
Norfolk	1,198	304	372	120	566	681	164	86	10	61	9	21	21	90	397	150	17	1
Plymouth	837	274	406	175	681	408	152	27	68	35	6	-	12	113	230	149	38	57
Suffolk	15,441	3,287	5,397	1,177	932	7,803	2,231	1,615	306	1,695	209	391	274	1,272	7,311	1,948	870	13
Worcester	3,354	705	544	213	877	1,835	433	214	7	196	73	39	5	207	1,134	374	106	14
Total	34,692	7,837	10,764	3,225	6,819	18,117	4,973	3,009	908	3,022	514	562	707	2,786	14,696	4,410	3,158	126

COUNTIES.	NUMBER REMAINING UNTRIED AT END OF YEAR.				Number wherein Verdict of Jury in Civil Cases has been set aside by Court on Ground it was Excessive.	CRIMINAL CASES.				NUMBER OF DAYS DURING WHICH COURT HAS SAT FOR HEARING.				
	CIVIL CASES.			Original Cases.		Number of Indict- ments Returned.	Number of Appeals Entered.	Number Disposed of Without Trial.	Number New Trial has been Ordered.	CIVIL CASES.			Original Cases.	
	Jury.	Jury Waived.	Equity.							Divorce.	Jury Waived.	Equity.		Divorce.
Barnstable	120	54	30	15	60	35	51	64	-	-	-	-	-	-
Berkshire	332	111	149	43	135	58	78	81	-	29	-	-	-	29
Bristol	1,431	367	480	199	984	290	747	776	-	121	18	7	4	59
Dukes	16	16	7	8	-	3	4	5	-	-	-	-	-	-
Essex	4,224	508	558	273	1,355	436	1,326	1,248	-	265	40	15	-	211
Franklin	169	89	205	27	32	28	33	48	-	44	6	4	2	8
Hampden	2,556	826	615	570	747	102	276	268	-	189	32	19	22	57
Hampshire	181	107	98	39	57	49	72	94	-	25 $\frac{1}{10}$	8	3 $\frac{1}{2}$	36	59
Middlesex	6,380	1,318	786	473	1,038 ^a	1,138	1,963	2,367	2	543	29	13	10	437
Nantucket	2	5	2	-	1	1	1	-	-	2	2	2	-	-
Norfolk	1,421	399	420	108	684	220	454	466	2	174	-	19 ^b	-	74
Plymouth	980	271	395	174	600	180	472	620	-	50	17 ^c	17 ^d	17 ^e	80
Suffolk	15,933	3,570	6,142	1,321	515	1,292	4,058	4,552	1	1,311	141	255	41	965
Worcester	3,659	661	613	201	222	357	1,430	2,235	-	235	42	17	3	169
Total	37,607	8,242	10,500	3,448	6,430	4,189	10,965	12,824	5	2,988 $\frac{1}{10}$	335	368 $\frac{1}{2}$	99 $\frac{1}{2}$	2,148

^a Including 2 cases transferred from jury list.

^b Including 2 cases transferred to Probate Court.

^c Unknown, owing to mixed sessions.

^d Jury waived and equity cases, 15; jury waived, equity and divorce cases, 2.

^e Number of days for civil and criminal cases reported as "two to three days."

^f Indictments, 728; appealed cases, 280.

^g Including jury waived and divorce cases.

^h Concurrent.

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1926, IN COMPLIANCE WITH GENERAL LAWS, CHAPTER 221, SECTION 24, AS AMENDED BY CHAPTER 131 OF THE ACTS OF 1924 (NATURALIZATION BUSINESS NOT INCLUDED).

(Printed by permission of the Secretary of the Commonwealth.)

COUNTIES.	NUMBER PENDING AT BEGINNING OF YEAR.				NUMBER ENTERED DURING YEAR.				NUMBER ACTUALLY TRIED.				NUMBER DISPOSED OF BY AGREEMENT OF PARTIES OR BY ORDER OF COURT.					
	CIVIL CASES.				CIVIL CASES.				CIVIL CASES.				CIVIL CASES.					
	Jury.	Jury Waived.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.	Criminal Cases.	Jury.	Jury Waived.	Equity.	Divorce.	
Barnstable	128	48	30	18	57	67	42	19	1	8	-	-	-	7	52	20	7	2
Berkshire	323	116	153	44	73	151	90	31	1	22	8	4	-	35	169	64	91	-
Bristol	1,950	483	545	196	734	621	197	130	1	181	38	47	2	57	890	336	296	6
Dukes	13	16	2	12	3	5	17	10	-	9	2	-	1	-	4	4	2	-
Essex	4,224	598	558	292	1,355	1,686	310	215	12	214	55	20	14	285	1,797	351	123	23
Franklin	175	77	207	31	30	153	36	25	2	40	11	24	4	21	122	36	143	4
Hampden	2,395	822	593	578	483	1,162	483	197	441	313	51	24	218	79	1,091	404	207	381
Hampshire	203	90	106	39	57	117	46	33	3	30	1	1	5	81	83	35	79	1
Middlesex	6,380	1,318	786	409	1,038	2,060	780	395	88	382	77	15	52	713	2,545	703	245	360
Nantucket	4	0	2	-	-	1	12	1	-	2	3	1	-	-	-	7	-	-
Norfolk	1,437	310	424	108	684	749	247	88	8	67	14	48	8	96	468	167	269	3
Plymouth	1,014	303	413	146	532	350	158	74	54	79	20	15	53	115	261	128	277	7
Suffolk	16,053	3,468	6,142	1,180	913	8,690	2,103	1,886	143	1,074	337	445	195	1,243	6,561	1,443	4,014	887
Worcester	3,895	701	624	201	240	1,540	420	212	5	304	51	43	4	194	1,389	320	387	1
Total	38,103	8,269	10,584	3,224	6,205	18,282	4,941	3,316	759	2,735	668	683	556	2,926	15,632	4,018	6,140	1,675

COUNTIES.	NUMBER REMAINING UNTRIED AT END OF YEAR.				Number wherein Verdict of Jury in Civil Cases has been set aside by Court on Ground it was Excessive.	CRIMINAL CASES.				NUMBER OF DAYS DURING WHICH COURT HAS SAT FOR HEARING.				
	CIVIL CASES.					Number of Indictments Returned.	Number of Appeals Entered.	Number Disposed of Without Trial.	Number wherein New Trial has been Ordered.	CIVIL CASES.				
	Jury.	Jury Waived. ^a	Equity.	Divorce.						Jury.	Jury Waived.	Equity.	Divorce.	
Barnstable	135	70	42	17	72	20	56	54	-	11 ^b	1 ^c	-	-	91
Berkshire	307	136	89	44	154	39	99	80	-	43	- ^d	15 ^e	-	48
Bristol	500	306	332	189 ^f	1,047	333	855	818	-	141	17	8	2	53
Dukes	9	27	4	11	8	2	11	4	-	17 ^g	-	-	-	-
Essex	4,020	481	633	266	1,371	381	1,322	1,502	2	356	35	15	1	177
Franklin	210	81	94	29	24	24	43	53	-	20	5	6	1 ^h	11
Hampden	2,247	755	580	438	563	96	346	283	-	235	25	15	16	63
Hampshire	206	91	57	36	56	41	136	94	1	16	1	3	1	69
Middlesex	6,795	1,395	936	55	336	1,024	1,925	2,938	1	500	41	12	8	394
Nantucket	1	8	-	-	-	-	-	-	-	3	-	-	-	-
Norfolk	1,631	376	195	105	432 ⁱ	202	457	678	-	130	-	18	-	86
Plymouth	1,024	313	195	140	407	136	494	689	-	85	10	10	6	95
Suffolk	18,092	4,128	4,014	406	389	1,087	4,249	4,762	5	1,441	132	314 ^j	30	971
Worcester	3,542	750	406	201	299	379	1,631	1,763	-	380	44	22	2	161
Total	38,739	8,917	7,577	1,967	5,078	3,764	11,624	13,718	9	3,378	311	438	60 ^k	2,107

^a Approximate, owing to mixed sessions.^b Including jury waived and equity cases.^c Includes one transferred to Probate Court.^d Number of days for civil and criminal cases reported as, "seventeen days in all."^e Probation cases not included as heretofore.^f Equity motion session sitting for Suffolk and all other counties in the Commonwealth; a justice being in attendance each day throughout the year except Sundays and legal holidays.

SUMMARY OF CIVIL BUSINESS IN MUNICIPAL COURT OF CITY OF BOSTON FOR YEAR 1925.

"Deft. D Clerk" means that defendant was defaulted, under the general rule, by the clerk.

"Deft. D Court" means that defendant was defaulted in court.

	Entered.	Removed. ¹	DEFT. D. CLERK.		DEFT. D. COURT.		INTRA. FILED.		MARKED FOR —		TRIAL LISTS.				FINDINGS.		APPELLATE DIVISION.			
			Non-Appearence.	Non-Answer.	Non-Appearence.	Non-Answer.	To Plaintiff.	To Defendant.	Motion List.	Trial List.	Non-Suits.	Defaults.	Tried.	Reserved.	For Plaintiff.	For Defendant.	Requests for Report.	Reports Allowed.	Reports Disallowed.	Petitions to Establish.
Contract	21,035	1,062	8,156	105	157	588	393	2,006	-	-	-	-	1,676	644	1,137	479	177	86	7	6
Tort	4,617	201	362	18	-	33	657	429	-	-	-	-	803	349	417	335	52	30	2	1
All others	830	-	226	1	2	2	1	-	-	-	-	-	182	27	142	38	11	7	1	-
Totals	26,482	1,263	8,744	124	159	623	1,051	2,435	9,713	19,068	281	3,499	2,061	1,020	1,606	852	240	123	10	7

¹ Two actions removed to United States District Court.

SUMMARY OF CIVIL BUSINESS IN MUNICIPAL COURT OF CITY OF BOSTON FOR YEAR 1925 — *Concluded.*

	APPELLATE DIVISION — Concluded.										JUDGMENTS.							Original Executions Issued.	Executions Renewed.			
	Reports Proved.	Cases Heard.	Cases Decided.	Affirmed.	Reversed.	Modified.	Entire Re-Trials Ordered.	Partial Re-Trials Ordered.	Motions.	Appealed to Supreme Judicial Court.	Appealed to Superior Court.	Removed to the District Court of the United States.	Entered on Non-Suits.	Entered on Defaults.	Entered on Trials (Open Court).	Entered on Trials (Findings).	Entered on Agreements.			Total Piffs.' Judgments.	Amount Piffs.' Judgments.	Average (Per Action).
Contract	1	67	63	48	6	4	5	1	8	15	1	1	168	11,008	764	441	2,409	14,590	\$2,280,201 12	\$156 28	11,978	4,175
Tort	—	30	29	22	2	—	5	1	1	1	1	2	70	26	272	268	1,622	2,067	244,714 72	118 39	690	49
All others	—	6	6	5	1	—	1	1	1	2	17	1	8	273	100	24	23	404	4,961 68	12 28	331	4
Totals	1	103	98	75	9	4	10	1	10	18	17	3	246	11,367	1,136	733	4,054	17,061	\$2,520,877 52	\$148 28	12,999	4,228

SUMMARY OF CIVIL BUSINESS OF THE MUNICIPAL COURT OF THE CITY OF BOSTON FOR THE YEAR 1910.

(Reprinted, for comparison, from the Report of the Special Commission on Suffolk County Courts in 1912, H. 1638 of 1912, p. 23.)

CLASS OF CASE.	Total.	Agreement with- out Trial.	DEFAULTS.		CASES TRIED. ¹		FINDING FOR PLAINTIFF.		FINDING FOR DEFENDANT.		NON-SUITS.		Pending.	Default and Pend- ing.	Total Number Ap- pealed.
			Number.	Number Ap- pealed.	Number.	Number Ap- pealed.	Number.	Number Ap- pealed.	Number.	Number Ap- pealed.	Number.	Number Ap- pealed.			
Contract	12,148	1,375	6,209	424	1,206	528	794	359	412	169	160	22	2,674	524	974
Tort	2,012	988	120	14	535	235	232	107	303	128	90	24	254	25	273
Contract or tort	269	74	32	3	54	17	28	11	26	6	10	-	94	5	20
Ejectment	115	3	94	-	3	-	3	-	-	-	1	-	11	3	1
Replevin	70	20	20	1	10	2	9	1	1	1	3	1	16	1	4
Miscellaneous	157	17	11	-	86	3	72	-	17	3	6	-	29	5	3
Total	14,771	2,477	6,486	442	1,897	785	1,138	478	759	307	270	47	3,078	563	1,274

¹ Seventy-five tried cases were pending.

MUNICIPAL COURT OF THE CITY OF BOSTON.

Entries and Removals where Ad Damnum was over \$2,000 in 1925.

ENTRIES.

There were 904 entries of suits in which more than \$2,000 was claimed. Of these, 1 was for \$7,000 (in excess of the jurisdiction) and 2 for \$5,000 were removed to the United States Court.

Of the remaining 901 entries there were:

Actions of contract	418
All others	483
Total	901
301 actions were for	\$5,000
164 actions were for	4,000

The rest were scattered between \$2,000 and \$4,000.

REMOVALS TO SUPERIOR COURT.

Of the above 901 entries, there were removed by the defendant:

Actions of contract for \$5,000	42
Other actions for \$5,000	22
Actions of contract for \$4,000	23
Other actions for \$4,000	1
Actions of contract between \$2,000 and \$4,000	67
Other actions between \$2,000 and \$4,000	15
Making total removals (out of 901 entries)	170

Same for 1926 from January 1 to October 23.

Entries over \$2,000:

Actions of contract	429
All others	508
Total	937
331 actions were for	\$5,000
1 action was for	4,800
10 actions were for	4,500
206 actions were for	4,000
389 actions were scattered between	\$2,000 and \$4,000

Removals of the above:

Actions of contract for \$5,000	44
Other actions for \$5,000	25
Actions of contract for \$4,500	2
Others	1
Actions of contract for \$4,000	10
Others for \$4,000	3
Actions of contract between \$2,000 and \$4,000	58
Others	15
Total removals (out of 937 entries)	167

MUNICIPAL COURT OF THE CITY OF BOSTON.

Summary of Small Claims for the Year 1925.

	Actions entered.	Reported as set- tled out of Court.	Amount of Piffs. Claims.	Notices mailed to Defts.	Notices returned. Acceptance re- fused.	Notices returned. unable to locate.	Notices to Piffs. Set-offs.	Amount of Coun- terclaims or Set- offs.	ANSWERS.		Settled in Court before Hearing.	Hearings.	Settled in Court after Hearing.	Reserved.	Dismissals.	Transferred for Trial.	Removed to Su- perior Court.	Referred to Appel- late Division.
									Defendants.	Plaintiffs.								
Contract	1,112	159	\$19,750 01	1,126	1	85	11	\$646	444	18	65	346	41	5	25	1	4	1
Tort	76	5	1,917 00	76	1	1	1	1	47	1	4	37	8	1	3	1	3	1
Totals	1,188	164	\$21,667 01	1,202	1	85	11	\$646	491	18	69	383	49	5	28	1	7	1

	JUDGMENTS.										Neither Party.	Counterclaims dis- missed.	Counterclaims dis- allowed.	Piffs. (Original). Exons.	Defts. (Original). Exons.
	Entered on Default.	Entered on Non-Suits.	Entered on Hearings.	Total Piffs. Judgments.	Judgments.	Amount, Piffs. Judgments.	Total Defts. Judgments.	Amount, Defts. Judgments.	A mount, Defts. Judgments.	Judgments va- cated.					
Contract	387	14	296	598	\$11,456 34	85	\$193.05	1	1	1	14	1	2	349	1
Tort	2	3	27	13	284 00	16	1	1	1	1	1	1	1	1	1
Totals	389	17	323	611	\$11,740 34	101	\$193 05	1	1	1	14	1	2	349	1

It is noticeable that of 1,188 cases entered as small claims, only 7 were removed to the Superior Court.

In 1926, from January 1 to October 23, the small claims entries were: Contract, 907, tort, 61, total, 968, of which only 8 actions of contract were removed to the Superior Court.



STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1924, TO OCTOBER 1, 1925.

AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee.

District Courts	Civil Writs Entered	Appeals, Civil	Removals to S. C.	Reported to App. Div.	Appealed to S. J. C.	Poor Debt. & Dubug.	Small Claims	Insane	Crim. cases begun	Crim. Appeals	Drunkennes	Auto Cases		Int. liquor cases	Inquests	Juvenile cases under 17 years
												Operating under int. of int.	Liquor			
Worcester, Central.....	4486	12	531	1	...	482	949	270	8921	1086	4421	103	1382	278	02	602
Springfield.....	2855	3	195	6	1	202	1442	200	7492	194	1651	177	1721	332	21	457
Middlesex, First Eastern.....	2755	3	192	1	...	576	1221	89	4010	131	1511	*	736	161	27	155
Roxbury.....	644	3	7	1	...	109	708	...	14312	904	5261	*	2124	818	12	391
Bristol, Third.....	1558	1	85	5	...	71	406	92	4800	324	1445	83	531	600	20	284
Middlesex, Third Eastern.....	2443	8	138	14	...	1167	832	174	9478	648	3615	*	2207	505	22	290
Dorchester.....	368	4	4	...	...	620	549	...	5259	289	1000	53	1985	243	7	258
Lovell.....	1319	3	83	3	...	59	702	127	4912	239	2216	*	516	501	40	123
Bristol, Second.....	1446	3	164	2	1	96	483	70	4290	374	1769	...	82	569	30	296
Essex, Southern.....	2028	3	202	3	...	301	859	88	5536	343	1978	76	1183	584	27	303
Lawrence.....	1461	1	171	3	...	86	140	58	5481	309	2199	75	294	276	10	136
Norfolk, Eastern.....	1561	2	51	1	...	315	715	55	5924	198	1706	203	2562	182	29	238
Somerville.....	1242	...	81	1	...	424	365	65	2806	270	1525	61	329	208	9	208
West Roxbury.....	163	2	4	...	...	43	328	...	5105	254	1174	61	2368	147	18	191
Essex, First.....	880	8	172	4	...	102	401	251	2950	389	929	81	419	208	28	179
Brockton.....	850	1	113	4	...	94	518	80	3789	304	1605	124	555	260	22	249
East Boston.....	296	1	10	1	...	70	201	...	6265	178	3359	16	202	315	15	407
Chelsea.....	583	6	18	1	...	98	402	30	4388	313	1714	55	1027	147	29	404
South Boston.....	212	2	2	...	...	14	150	...	9786	343	5989	52	739	531	22	348
Essex, Northern Central.....	586	1	75	1	...	44	213	23	1253	94	668	38	105	70	13	42
Holyoke.....	515	...	77	1	...	15	263	...	1857	31	930	39	332	53	10	139
Hampshire.....	415	1	40	1	...	71	542	183	1646	117	617	74	344	169	18	121
Middlesex, Second Eastern.....	935	1	61	2	...	17	415	...	3443	189	1323	123	1050	123	31	168
Berkshire, Central.....	455	1	37	2	...	3	549	43	1787	70	600	51	388	147	9	83
Bristol, First.....	454	...	76	...	...	19	244	91	1578	163	522	62	193	148	17	109
Middlesex, Fourth Eastern.....	688	...	38	2	...	69	386	18	2601	103	669	74	1109	133	8	48
Newton.....	767	...	47	2	...	70	403	51	1771	117	600	61	602	25	19	139
Fitchburg.....	512	2	42	3	...	4	76	39	1613	55	919	54	240	56	5	87
Norfolk, Northern.....	145	1	3	1	...	108	113	75	1452	76	456	66	550	73	14	60
Brighton.....	250	...	22	...	...	50	236	1	3563	187	855	57	1362	237	20	111
Franklin, Greenfield.....	116	...	19	...	...	10	81	27	741	48	121	48	156	92	3	43
Worcester, First Southern.....	777	...	46	3	...	4	25	15	1235	49	369	33	209	74	6	29
Brookline.....	927	...	34	1	...	286	236	35	1599	31	318	39	625	40	9	101
Bristol, Fourth.....	249	...	15	...	...	97	412	24	1140	68	315	68	272	89	5	73
						15	...	25	1767	161	590	125	555	79	4	54

Brighton.....	145	1	3	1	...	50	236	1	3565	187	855	57	1362	237	20	111
Franklin, Greenfield.....	250	...	9	...	...	10	81	27	741	48	121	48	156	92	3	43
Worcester, First Southern.....	116	...	19	...	...	4	25	15	1255	49	369	33	209	74	6	29
Brookline.....	777	...	46	3	...	286	236	35	1599	31	318	39	625	40	9	101
Bristol, Fourth.....	227	...	34	1	...	15	252	25	1140	68	315	68	272	89	5	73
Plymouth, Second.....	343	...	15	...	...	97	412	24	1767	101	590	125	550	79	4	54
Chicopee.....	274	...	14	...	...	15	63	19	1195	32	539	50	210	56	7	85
Worcester, First Northern.....	319	...	17	1	...	4	77	43	962	72	352	51	135	121	6	64
Charlestown.....	181	1	3	...	...	705	159	...	5328	339	2845	29	936	269	4	180
Middlesex, First Southern.....	385	1	31	...	...	38	207	37	1247	46	267	38	244	89	6	82
Essex, Eastern.....	342	...	20	...	...	35	54	20	1132	105	516	20	134	68	1	62
Norfolk, Western.....	278	...	17	...	...	29	36	75	1025	70	177	33	360	97	12	48
Middlesex, Central.....	196	2	17	1	...	33	197	12	1086	61	315	68	318	102	5	19
Worcester, Second Southern.....	142	...	10	1	...	6	22	5	588	16	89	13	85	56	3	...
Hampden, Western.....	87	...	7	...	...	...	2	241	5	983	24	320	17	166	60	8
Berkshire, Northern.....	139	...	10	...	...	...	62	20	687	7	461	21	74	29	3	18
Marlborough.....	204	...	18	...	...	10	95	25	638	30	192	22	115	42	7	17
Worcester, Second Eastern.....	98	...	7	...	...	6	108	27	705	43	168	24	113	131	4	37
Newburyport.....	215	...	32	...	...	16	201	14	631	68	235	20	74	69	12	36
Plymouth, Third.....	175	...	5	...	...	24	202	7	752	45	177	33	173	79	6	20
Peabody.....	293	...	34	...	...	29	110	18	1229	49	522	32	173	198	7	180
Leominster.....	142	...	8	...	...	2	59	15	604	15	259	24	128	93	2	45
Worcester, Western.....	77	...	14	...	...	5	49	11	490	64	97	14	113	42	8	19
Worcester, Third Southern.....	101	...	13	...	...	5	65	21	345	14	101	10	74	15	3	15
Hampden, Eastern.....	75	...	5	...	...	...	...	20	683	52	128	48	182	113	5	15
Plymouth, Fourth.....	120	1	2	...	...	9	78	46	952	33	152	43	424	56	5	33
Norfolk, Southern.....	144	1	10	...	...	35	56	12	494	32	131	19	105	40	8	31
Middlesex, First Northern.....	100	...	5	...	...	5	105	12	795	18	96	23	126	110	4	4
Worcester, First Eastern.....	53	...	12	...	...	8	47	23	375	34	65	17	172	2	5	5
Berkshire, Fourth.....	65	...	2	1	...	5	83	11	414	4	146	15	68	15	2	52
Essex, Second.....	109	...	17	...	...	4	91	6	671	63	198	28	179	45	33	33
Barnstable, First.....	132	...	4	1	...	17	376	3	656	38	97	55	167	70	7	24
Barnstable, Second.....	122	...	2	1	...	29	105	5	305	13	24	15	97	37	5	22
Berkshire, Southern.....	80	1	7	...	...	...	174	17	312	9	61	7	91	43	4	23
Natick.....	126	1	9	1	...	13	74	12	407	12	158	12	106	28	...	19
Lee.....	24	...	2	...	...	...	202	7	276	13	60	12	98	39	7	6
Hampshire, Eastern.....	38	...	2	...	...	...	27	11	182	3	51	3	32	14	2	6
Franklin, Eastern.....	19	...	1	...	...	2	18	9	198	2	14	3	41	14	1	13
Essex, Third.....	25	...	...	...	...	4	53	1	353	5	146	22	45	42	4	3
Winchendon.....	36	...	2	...	...	2	25	5	114	5	37	5	22	10	2	2
Dukes County.....	30	...	1	...	...	...	146	4	192	3	24	0	37	11	...	11
Williamstown.....	11	...	...	...	...	...	12	6	84	1	16	2	8	10	...	6
Nantucket.....	5	...	...	...	...	...	32	...	159	...	40	7	58	7	...	9
39561	81	3224	72	3	6908	19618	2883	168681	10149	64155	3169	35219	10644	800	8155	

*Not reported separately

Grand Total of all Cases, 373,322

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**TOTAL TRIALS AND LEGAL REVIEWS IN CIVIL ACTIONS IN THE MUNICIPAL COURT
OF THE CITY OF BOSTON FOR THE YEAR 1925.**

Total entries	26,482
Removals to Superior Court	1,263
Removals to United States District Court	2
Tried	2,661
Decided in Appellate Division	98
Appealed to Supreme Judicial Court	18
Appeals Completed	7

Of the cases in which the appeal was completed 1 was settled in the Supreme Judicial Court and 1 was dismissed for delay.

In the other 5 cases, the decision of the Appellate Division was sustained.

CERTAIN CRIMINAL STATISTICS OF THE MUNICIPAL COURT OF THE CITY OF BOSTON.

(From years ending September 30, 1925, and September 30, 1926.)

DATE.	Criminal Cases pending at Beginning of Year.	Criminal Cases begun during Year.	Discharged, Not-prossed, Dismissed, Placed on File before Trial.	PLEAS.		FINDINGS.			Sentences Appealed to Superior Court.
				Guilty.	Not Guilty.	Guilty.	Not Guilty.	Bound Over.	
1925	48	38,235	1,726	14,978	7,924	15,932	1,443	368	1,683
1926	189	39,197	1,806	10,184	7,515	20,333	1,463	454	1,665

APPENDIX C.

DRAFTS OF LEGISLATION RECOMMENDED.

AN ACT RELATIVE TO THE DISPOSITION OF MINOR VIOLATIONS OF THE
MOTOR VEHICLE LAWS AND MOTOR TRAFFIC REGULATIONS.

Be it enacted, etc., as follows:

SECTION 1. Chapter ninety of the General Laws is hereby amended by striking out section twenty as amended by chapter one hundred and thirty of the acts of nineteen hundred and twenty-two and substituting therefor the following:—

Section 20. Violations of any provisions of this chapter the punishment for which is not specifically provided or of any rule or regulation of the registrar made under section thirty-one or of a special local regulation or rule lawfully made under section eighteen of this chapter or section twenty-two of chapter forty or section ten of chapter eighty-five shall not be held to be criminal offenses, conviction for which involves a criminal record, but shall be held to render the person violating them liable to the commonwealth for civil penalties hereinafter specified collectible by an action of contract as hereinafter provided and, under the circumstances hereinafter described, to suspension of his operator's license to enforce the collection of said penalties and to secure the observance of said provisions. Police officers, investigators or examiners shall have the same duties of taking cognizance of such violations as heretofore; but, upon taking cognizance of such violations, instead of arresting, or filing a criminal complaint as heretofore, against the person whom they charge with such violation, shall report the case by entering, upon such person's license, the date, the city or town, the violation charged, the police or other officer's name and number, and if known the name of the court and address of the nearest office of the clerk of said court, and the time at which such person may appear with his license and elect to contest the case or pay the penalty or make the non-committal payment hereinafter specified. The officer shall forthwith report the facts thus entered on the license and the license number and operator's address thereon to his superior officers who shall forward the same forthwith to the clerk of the court for the district. If the officer does not know the name and address of the proper court and clerk's office and the time at which to notify the operator to appear, he may omit that information and the clerk of court on receiving the report shall send a notice of the time and place by registered mail, postage prepaid, and return receipt requested, to the address given.

The person whose license is thus endorsed or who is otherwise notified as herein provided shall appear, with his license, at, or if the clerk's office is open for such business, before, the time specified and make the payments hereinafter specified or notify the clerk that he denies the violation charged and wishes to contest it. If payment is made, the clerk shall endorse an official receipt of the amount on the license and send a copy of the entry of the violation and of the receipt to the registrar. No payment shall be made or accepted unless the license is produced therewith so that it may be endorsed. If the person charged or someone representing him or her appears without his or her license, at the time specified the clerk on payment of a fee of one dollar may continue the case to another specified time for such payment, which shall be endorsed upon the license. If the person so charged denies the violation and elects to contest the same, or if such person does not appear with his or her license at the time specified on the license or any continuance there entered, the clerk shall forthwith begin on behalf of the commonwealth an action of contract against him for the penalty specified, by entry on the docket and by endorsing on the license a notice of the action and time and place for hearing which endorsement shall be a sufficient service of such notice or, if the person charged does not appear with his license, a notice of the action containing the information reported by the officer shall be mailed to the address of such person, as reported by the officer making the charge, by registered mail, return receipt requested, and the case shall thereafter be governed by the rules for small claims procedure of the district courts so far as consistent herewith, or such other rules consistent herewith, as may be made from time to time for cases hereunder.

Upon the entry of final judgment, the clerk of the court in which such judgment is entered shall endorse the substance of the judgment on the license and if the judgment is for the penalty, the amount of the penalty and costs shall be so entered and upon satisfaction thereof that fact shall be so entered and the registrar shall be notified by the clerk.

If the defendant in such action defaults at the hearing or is not present or represented, with the license for endorsement, at the time judgment is entered, the clerk shall notify the defendant of the judgment by registered mail, return receipt requested, and in said notice shall direct him to produce his license for endorsement and pay the judgment within days, and that in default thereof his license will be automatically suspended until payment is made and endorsed thereon, and that the registrar will be notified of such default. If the judgment is not satisfied within the time specified in the notice, the license shall be automatically suspended until payment is made and the clerk shall forthwith notify the defendant by registered mail, return receipt requested, of the fact of suspension because of nonpayment and shall notify the registrar also of that fact. Upon payment thereafter, the clerk shall enter on the license and notify the registrar that such suspension for nonpayment is ended.

If an officer takes cognizance of, and endorses on the license or otherwise reports more than one violation at one time, the person so charged shall be liable for only one penalty in one action of contract, but the action may be supported upon any or all of the facts thus charged. All such violations charged by any one officer at the same time shall also be treated as one violation for which noncommittal payments are allowed.

The civil penalties for such violations and the noncommittal payments allowed shall be as follows:

For the first time in any one license year, ten dollars. A person charged with such first violation may settle the claim without suit by a noncommittal payment of five dollars and a recording fee of three dollars as costs and twenty-five cents as a fee for notifying the registrar.

For the second time in any license year, the penalty shall be fifteen dollars and the noncommittal payment allowed shall be ten dollars and the recording fee of three dollars and twenty-five cents as a fee for notifying the registrar.

For the third time, the penalty shall be twenty dollars.

For the fourth time, the penalty shall be twenty-five dollars.

For the fifth time the penalty shall be thirty dollars.

For the sixth time, the penalty shall be fifty dollars and the automatic suspension of the license for ten days and, until the penalty or judgment therefore is paid.

For the seventh time, the penalty shall be fifty dollars and automatic suspension of the license for six months or for the remainder of the license year, whichever is the longer period, and until the penalty or judgment therefore is paid.

If in any case the period of suspension overruns the license year there shall be no renewal of the license until the expiration of the period.

In each of the foregoing cases in which an automatic suspension of the license is provided for, the period of suspension shall run from the date at which the person charged is notified to appear at the clerk's office, if the penalty is paid so that no action is begun or, if an action is begun, then from the date on which judgment is entered if the judgment is against the defendant.

In each of the cases in which the penalty is paid without suit, the recording fee of three dollars and twenty-five cents as a fee for notifying the registrar shall be added to the penalty. In each case in which an action is brought, an entry fee of six dollars, twenty-five cents for notifying the registrar and the actual cost of mailing all other notices by registered mail shall be further added to the penalty and the judgment shall carry interest at the rate of twelve per cent per annum.

The justices, or a majority of them, of all the district courts shall prescribe the form of endorsement of the charge and other information to be made by the officer on the license and the forms of the reports of such charges and information thus endorsed to be made by the officer through

his superiors to the clerks of the district courts and by them to the registrar.

If a person is finally convicted of any criminal charge of violating the law relating to motor vehicles, the conviction, the penalty, and the satisfaction thereof shall be endorsed upon his license, if he has one, which shall be produced for the purpose as part of the sentence to be complied with and each of such criminal convictions so entered shall be counted as having the same effect as a judgment for a civil penalty hereunder in advancing the license toward the stage of automatic suspension.

SECTION 2. Section eight of chapter ninety of the General Laws as heretofore amended is hereby further amended by adding at the end thereof the following:

The form of the license to operate as determined by the registrar shall be such as to provide adequate space upon the back or elsewhere for (a photograph of the person to whom the license is issued and) endorsements in the form prescribed by the rules of the district courts for endorsements as to violations as herein provided for.

SECTION 3. Section fifteen of said chapter ninety is hereby amended by striking out the last sentence.

SECTION 4. Section nineteen of said chapter ninety as amended by chapter one hundred eighty of the acts of nineteen hundred and twenty-five is hereby further amended by adding at the end thereof the words: — Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars, — also by adding thereafter three new sections, as follows:

Section 19A. The specific penalties imposed by any street traffic regulations or rules for driving motor vehicles adopted by the board of street commissioners or other local boards or authorities having jurisdiction over the highways in any city, town, or other political division in the commonwealth under section eighteen of this chapter or under section twenty-two of chapter forty or under section ten of chapter eighty-five are hereby annulled and section twenty shall apply to violations of all such regulations or rules thus adopted. But in case of a violation of such local regulations or rules the penalties collected by the action of contract provided for by section twenty and the noncommittal payments made thereunder shall be paid over to the local authorities in the same manner as fines imposed for such violations hitherto have been paid. The recording fees and entry fees therefor shall go to the county in which the court is situated.

Section 19B. The "forfeiture" provided for in section five of chapter eighty-nine shall be construed to be a civil penalty and shall be governed by section twenty of this chapter.

Section 19C. Any person convicted of a violation of any provision of section ten or thirty-two shall be punished by a fine of not more than twenty-five dollars for the first offense, not less than twenty-five nor more

than fifty dollars for a second offense, and not less than fifty nor more than one hundred dollars for subsequent offenses committed during any period of twelve months.

SECTION 5. Section twenty-five of chapter ninety is hereby amended by adding at the end thereof the words: "except that neglect to stop, as distinguished from refusal to stop, when signaled to stop by any police officer under section twenty-five shall be governed by section twenty."

SECTION 6. Section twenty shall apply to nonresident operators authorized to drive motor vehicles within the commonwealth under sections three and ten. In such cases, as also in the case of a licensed resident operator for an unintentional violation of section eleven, or in the discretion of the officer for other violations covered by section twenty the officer taking cognizance of any violation, instead of endorsing the same on the license shall enter the information in the same form upon a notice which he shall thereupon hand to the operator or if the operator is not present attach to the car. Such entry of the notice on the license shall be full service thereof. If the person thus notified appears at the clerk's office in accordance with the notice, the clerk, in the case of a resident operator appearing with his license but without the entry fully and clearly made, shall enter upon the license the information which could not be entered originally by the officer because of the absence of the license, or make clear that which was not clearly entered. In the case of a nonresident operator having no Massachusetts license, the clerk shall thereupon issue to him a form, which shall be called, "A nonresident's Driving Record", and shall endorse thereon the report of the officer and the other particulars as provided in the case of resident operators. The clerk shall also notify the registrar of such entry with a copy thereof, and unless and until such person's right to operate in this commonwealth is revoked under section three, sections eleven and twenty and the following section shall apply to such driving record in the same manner as if it were a Massachusetts license. If the person does not appear his right to operate in Massachusetts shall be automatically suspended from the time at which he was notified to appear until he appears and complies with the law as herein provided for resident operators.

SECTION 7. Wilful alteration, mutilation, or defacement of the driver's record on the license by the licensee or any one with his consent shall be subject to a penalty of fifty dollars and automatic suspension of the license for the remainder of the year.

AN ACT RELATIVE TO ATTORNEYS.

Be it enacted, etc., as follows:

SECTION 1. Section forty of chapter two hundred and twenty-one of the General Laws is hereby amended by striking out said section and substituting therefor the following sections:

Section 40. An attorney may be censured, suspended, removed or otherwise dealt with by the supreme judicial court for deceit, malpractice or other gross misconduct, and shall also be liable in damages to the person injured thereby, and to such other punishment as may be provided by law.

Section 40A. For the purpose of dealing with complaints of professional misconduct against attorneys the commonwealth shall be divided into three districts as follows: The Suffolk district, which shall comprise the county of Suffolk, the eastern district, which shall comprise the counties of Essex, Middlesex, Norfolk, Plymouth, Barnstable, Bristol, Dukes County and Nantucket, and the western district, which shall comprise the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire. The justices of the supreme judicial court shall from time to time appoint seven members of the bar from each of said districts to serve for such periods as the justices shall determine, the appointments to be subject to revocation at any time. The persons so appointed shall be known as the committee of inquiry of the bar for their respective district, and it shall be their duty to hear complaints of professional misconduct against attorneys. One of the members of each of said committees shall be designated by the justices as the chairman.

Section 40B. The committee of inquiry of each district shall be provided with a secretary, who shall be a member of the bar assigned by the justices of the supreme judicial court for such periods as they shall from time to time determine. The secretaries shall receive such compensation as the justices shall determine and shall receive and investigate complaints which may be filed with them and present to the committee of inquiry the evidence in such cases as call for a hearing before the committee.

Section 40C. The hearings before a committee of inquiry shall be held by at least three members who shall be assigned for the purpose by the chairman of the committee. Witnesses may be summoned to attend and testify and produce books and papers before the committee and may be sworn by any member thereof. The justices of the supreme judicial court may appoint an official stenographer, as the occasion may arise, to report hearings before the committee.

Section 40D. If, in the opinion of a majority of the members of the committee sitting in a given case, the case calls for consideration by the court, they shall report their findings of fact, with a transcript of the evidence and with its recommendations as to the disposition which should be made of the case, to the supreme judicial court. Any such report of findings shall be given the weight which is given by a court of equity to a master's report accompanied by a report of the evidence, and after a hearing the court shall enter such order or decree as it may deem proper.

Section 40E. If in the opinion of a majority of the members of the committee sitting in a given case the case does not call for consideration by the court they may dismiss the case or administer to the person charged

such censure as they deem proper. But in any case, in which the complainant so requests, the committee shall report its findings and recommendation to the court.

Section 40F. The justices of the supreme judicial court shall from time to time make such rules as they deem proper with respect to the giving of notice to the person charged, of the nature of the charges and the time and place for hearings before the committee, and as to such other details as they may deem proper for the fair conduct of such inquiries.

Section 40G. Members of the committee of inquiry shall serve without compensation but their expenses, certified by the chairman of the committee and approved by the chief justice of the supreme judicial court, and the compensation of the secretaries, together with such actual expenses of a clerical or other nature as may be approved by the said chief justice shall be paid from the treasury of the commonwealth upon his certificate. After a case has been reported to the court by the committee of inquiry, the expenses of the further proceedings shall be paid as in criminal prosecutions in the superior court; and the proceedings in court shall be conducted by the secretary of the committee of inquiry for the district or by some attorney to be designated by the court.

Section 40H. Whenever a complaint is filed in court on account of alleged professional misconduct of an attorney and the complaint has not been heard by a committee of inquiry, it shall be forthwith referred by the court to the proper committee of inquiry for a hearing and report, and until the report of the committee is filed the papers shall be impounded in the office of the clerk of the court.

Section 40I. Petitions for readmission to the bar of attorneys who have been disbarred shall be filed in the supreme judicial court and may be referred by the court to the proper committee of inquiry for investigation and report.

Section 40J. Proper records of all complaints against attorneys and the disposition made thereof shall be kept in each district by the secretary of the committee of inquiry for the district. Such records shall be at all times in the custody of the secretary for the time being. They shall not be public records but shall be available for the use of the committee and for other proper uses.

SECTION 2. Section forty-one of said chapter two hundred and twenty-one is hereby amended by inserting after the word "removed" in the first line the words: — or suspended, — by striking out, in the same line, the word "thereafter" and inserting in place thereof the words: — after such removal or during such suspension, — and by inserting after the word "removal" in the third line the words: — or during such suspension, — so as to read as follows: — *Section 41.* Whoever has been so removed or suspended and continues after such removal or during such

suspension to practice law or to receive any fee for his services as an attorney at law rendered after such removal or during such suspension, or who holds himself out or who represents or advertises himself as an attorney or counsellor at law, or whoever, not having been lawfully admitted to practice as an attorney at law, represents himself to be an attorney or counsellor at law, or to be lawfully qualified to practice in the courts of the commonwealth, by means of a sign, business card, letterhead or otherwise, or holds himself out or represents or advertises himself as having authority or power in behalf of persons who have claims for damages to procure settlements of such claims for damages either to person or property, or whoever, not being an attorney at law, solicits or procures from any such person or his representative, either for himself or another, the management or control of any such claim or authority to adjust or bring suit to recover for the same, or solicits for himself or another from a person accused of crime or his representative the right to defend the accused person, shall be punished for a first offence by a fine of not more than one hundred dollars or by imprisonment for not more than six months, and for a subsequent offence by a fine of not more than five hundred dollars or by imprisonment for not more than one year.

AN ACT RELATIVE TO THE SITTINGS OF THE SUPERIOR COURT.

SECTION 1. Section fourteen of chapter two hundred and twelve of the General Laws, as amended by chapter thirty-five and three hundred and twenty-seven of the acts of nineteen hundred and twenty-one, is hereby amended by striking out the whole thereof and substituting therefor the following:

Sittings of the court in the several counties shall be held at such times as the chief justice shall designate as follows:

For Barnstable at Barnstable.

For Berkshire at Pittsfield.

For Bristol at Taunton, New Bedford and Fall River.

For Dukes County at Edgartown.

For Essex at Salem, Lawrence and Newburyport.

For Franklin at Greenfield.

For Hampden at Springfield.

For Hampshire at Northampton.

For Middlesex at Cambridge and Lowell.

For Nantucket at Nantucket.

For Norfolk at Dedham.

For Plymouth at Plymouth and Brockton.

For Suffolk at Boston.

For Worcester at Worcester and Fitchburg.

On or before the fifteenth day of November in each year the chief justice shall by order establish the times for the sittings for civil and for criminal business for all the counties for the year beginning the first Monday of January next ensuing. Such order shall be transmitted to the several clerks of courts and shall be entered in the records of the court in each county and posted in a conspicuous place in the several clerks' offices. Such sittings shall be arranged by the chief justice at such times as in his opinion will best insure the prompt administration of justice throughout the commonwealth. The times thus established for any such sittings shall continue from year to year unless changed by a new order on or before the fifteenth of November. Special sittings of the court in addition to those established as aforesaid shall be held at such times and places as the chief justice directs.

Note.

If the plan proposed in this act is approved, sections 15, 16, 17 and 18 of chapter 212, and certain sections in other chapters, should be amended so far as necessary to fit the general plan.

AN ACT RELATIVE TO THE METHOD OF STATING EVIDENCE IN BILLS OF EXCEPTIONS.

Be it enacted, etc., as follows:

SECTION 1. Section one hundred and thirteen of chapter two hundred and thirty-one of the General Laws is hereby amended by striking out in the seventh line thereof the words "in a summary manner."

SECTION 2. Chapter two hundred and thirty-one of the General Laws is hereby further amended by inserting after section one hundred and thirteen thereof a new section, as follows:

Section 113A. Bills of exceptions shall contain a transcript of the evidence omitting such portions thereof only as the parties agree in writing, or, in the event of their disagreement, as the court in which the exceptions were taken determines not to be material; provided, however, that the court in which the exceptions were taken may direct any portion of the evidence to be included although the parties may have agreed that it was not material, and, provided further, that if the parties agree, or if the court in which the exceptions were taken orders, the evidence may in whole or in part be stated in summary form, but such order shall be made by the court only upon motion of the excepting party and after a hearing.

AN ACT RELATIVE TO WRITS.

SECTION 1. Section sixteen of chapter two hundred and twenty-three of the General Laws is hereby amended to read as follows:

Section 16. Actions at law, unless founded on scire facias or other

special writs, or unless otherwise authorized by statute or by established practice, shall be commenced by original writs. Such writs shall be signed, sealed and bear teste as required by the constitution, and shall be framed, either to summon the defendant, with or without an order to attach his goods or estate, or to take his body; or, in an action commenced by trustee process, to attach his goods or estate in his own hands and also in the hands of the trustee. Until changed by the courts original writs and special precepts under section eighty-six shall be in the form heretofore established by law and by the usage and practice of the courts. The courts may, for any reasons deemed by them to be sufficient, make changes in the forms of writs or precepts from time to time, subject to the final control of the supreme judicial court.

SECTION 2. Section eighty-six of said chapter is hereby amended so that the first sentence thereof shall read as follows:

A precept for such arrest or attachment shall be in the same form, so far as practicable, as an original writ of *capias* or of summons and attachment.

AN ACT TO PROHIBIT NOMINAL OR "CHIP" ATTACHMENTS.

Section seventeen of chapter two hundred and twenty-three of the General Laws is hereby amended by adding at the end thereof the following:

Nominal or "chip" attachments shall no longer be made by officers in the service of a writ of summons and attachment. If the officer does not in fact make an attachment, he shall cross out in the form of separate summons now in use the words "And your goods or estate are attached to the value of dollars for security to satisfy the judgment which the said plaintiff may recover upon the aforesaid trial" or other words reciting the fact of attachment when no attachment has been made; and he shall state in his return either that he found no property of the defendant to attach or that he was not directed by the plaintiff or his attorney to make an actual attachment, and such statement in the return shall be a sufficient compliance with the command in the writ to make an attachment. In case of the adoption by the courts under section sixteen of this chapter of a new form of summons which contains no reference to attachment, the officer serving such summons after an actual attachment has been made shall, as part of his duty, write or stamp upon the summons over his signature as such officer at the bottom of the face of the summons the words, "Your goods or estate are attached to the value of the sum claimed in this summons," or words to that effect, and the officer's return to the court upon the writ in such a case shall state the fact that he notified the defendant in writing of the attachment.

AN ACT TO SEPARATE DEBT-COLLECTING FROM CONTROVERSIAL LITIGATION.

Chapter two hundred and thirty-one of the General Laws is hereby amended by inserting after section fifty-nine the following new section:

Section 59A. In all actions of contract where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant the plaintiff may, at any time after the defendant has appeared, on affidavit made by himself or by any other person who can swear to the facts of his own knowledge, verifying the cause of action and stating that in his belief there is no defense thereto, move for the immediate entry of judgment for the amount of the debt or other demand, together with interest if any is claimed. The motion may be set down for hearing upon four days' notice and after hearing the court may, unless the defendant by affidavit, by his own evidence or otherwise, shall show to the satisfaction of the court that there is a substantial question of fact in dispute, enter an order for judgment for the amount of the debt or other demand, with interest, if any is due, and costs, and such judgment shall be entered forthwith; and if the defendant shows that there is a fact in dispute sufficient to entitle him to a trial but fails to satisfy the court that he has in reality a defense to the action or fails to disclose such facts as in the opinion of the court justly entitle him to defend, the court may similarly order an entry of judgment for the amount of the debt or other demand with interest, if any is due, and costs; but in such case judgment shall not be entered until the expiration of seven days from the order and shall then be entered unless the defendant in the meanwhile files a demand for a trial; and if such demand is filed the court may order the case advanced for speedy hearing and, whether the case is so advanced or not, if at the trial the plaintiff recovers an amount not less than that named in the order costs shall be taxed against the defendant in an amount sufficient to cover the reasonable expenses of the plaintiff, including counsel fees incurred after the filing of the demand for a trial, such costs to be taxed after summary hearing by the justice presiding at the trial or, if he is unable to hear the matter, by any other justice of the court. If the plaintiff recovers an amount less than that named in the order, or if the defendant prevails, costs shall be taxed as in ordinary cases, but the court may in its discretion increase the amount by an allowance on account of expenses of either party as may be deemed just.

AN ACT RELATIVE TO APPEALS FROM APPELLATE DIVISIONS OF DISTRICT COURTS.

SECTION 1. Section one hundred and nine of chapter two hundred and thirty-one of the General Laws is hereby amended by substituting for the first three sentences thereof the following:

Section 109. An appeal shall lie from the final decision of the appellate division to the supreme judicial court for the commonwealth upon leave granted by said court. A claim of appeal shall be filed in the office of the clerk of said municipal court within five days after notice of the decision of the appellate division, and within ten days after such notice a motion for leave to appeal shall be filed in the office of the clerk of the supreme judicial court for the commonwealth, accompanied by five typewritten copies of the report upon which the case was heard by the appellate division and of the opinion of said division. For the preparation of these copies a reasonable fee shall be charged, to be fixed by the justices of said municipal court. At the same time there may be filed in typewriting a succinct statement of the grounds for asking leave to appeal, but no oral argument upon the motion shall be permitted. If leave to appeal be granted the cause shall not be removed but only the question or questions to be determined.

SECTION 2. Section one hundred ten A of said chapter two hundred thirty-one, inserted by section eight of chapter five hundred thirty-two of the acts of nineteen hundred twenty-two, is hereby amended by adding at the end thereof the words:— and in any county which is not included in the regular sittings of the supreme judicial court for the commonwealth the motion for leave to appeal shall be filed with the clerk of courts for such county and by him transmitted with all papers to the chief justice of the supreme judicial court.

AN ACT RELATIVE TO THE TRANSMISSION OF PAPERS IN APPEALED CASES.

Be it enacted, etc., as follows:

SECTION 1. General Laws, chapter two hundred and eleven, is hereby amended by inserting the following section after section fourteen, namely:

Section 14A. In all cases before the supreme judicial court in banc including cases coming to it from the supreme judicial court when held by a single justice, the superior court, the land court, the probate court and the appellate division of the municipal court of the city of Boston and an appellate division of the district courts, the clerk of the court below, at the expense of the appellant or excepting party, or, upon a case reserved or reported at the expense of the plaintiff or of the party at whose request it is reserved or reported, or in any criminal case at the expense of the commonwealth, shall prepare and transmit to the supreme judicial court for the commonwealth or for the proper county one copy of every paper on file in the case, except papers used in evidence only, including however an opinion or memorandum of decision if any was made by the court below, and of all papers made part of the case or referred to in the bill of exceptions or report, or so much thereof as is necessary fully to present the question of law, for the use of the chief justice,

and a like copy for the clerk of the supreme judicial court, which shall be kept on file in said court; and one copy of the bill of exceptions, report or papers upon the question of law arising on appeal for each associate justice, for each party and for the reporter of decisions. Original papers used in the trial which are needed in the supreme judicial court shall be transmitted to its clerk to be kept on file by him until the rescript in such action is sent. The expense of such copies and transmission shall be taxed in the bill of costs of the prevailing party, if he has paid it.

SECTION 2. General Laws, chapter two hundred and twelve, section eleven, is hereby repealed.

AN ACT RELATIVE TO WORKMEN'S COMPENSATION CASES.

Section eleven of chapter one hundred and fifty-two of the General Laws is hereby amended by adding at the end thereof the following:

In any case in which an appeal would lie from a decree of the superior court under this section a justice of said court without making any decision therein may reserve the case for determination by the supreme judicial court in banc.

AN ACT RELATIVE TO PRIVATE CONVERSATIONS BETWEEN HUSBAND AND WIFE IN CASES OF DOMESTIC RELATIONS.

Section twenty of chapter two hundred and thirty-three of the General Laws is hereby amended by inserting in the clause marked "*First*," after the word "seventy-three," the words:— and libels for divorce under chapter two hundred eight or proceedings under sections thirty to thirty-seven of chapter two hundred nine.

AN ACT RELATIVE TO THE JUDICIAL COUNCIL.

Be it enacted, etc., as follows:

That General Laws, chapter two hundred and twenty-one, section thirty-four C be and is hereby amended by inserting the following words at the beginning of the section: "The secretary of said council shall receive for his services such compensation as the governor and council shall approve," and by inserting the word "other" between the words "no" and "member of said council," so that section thirty-four C shall read as follows: "The secretary of said council shall receive for his services such compensation as the governor and council shall approve. No other member of said council shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve."

APPENDIX D.

THE ENGLISH SCHEDULE OF COURT FEES (BEING THE SUPREME COURT FEES ORDER OF 1924).

Reprinted from "The Yearly Practice of the Supreme Court for 1925," by Sir Willes Chitty and H. C. Marks.

Section I.

FEES PAYABLE IN EVERY DIVISION OF THE HIGH COURT.

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
<i>Commencement of a Cause or Matter.</i>			
1. On sealing a writ of summons for the commencement of an action and filing a copy thereof.	£ s. d. 1 10 0	The filed copy . .	Impressed.
2. On sealing an originating summons, to which an appearance is required, and filing a copy thereof.	1 10 0	The filed copy . .	Impressed.
3. On sealing any other originating summons and filing a copy thereof. ¹	0 10 0	The filed copy . .	Impressed.
4. On sealing a concurrent or renewed writ of summons or a concurrent originating summons.	0 5 0	The præcipe . .	Impressed.
5. On sealing an amended writ of summons or an amended originating summons and filing a copy thereof. <i>Note.</i> — No fee is payable on the fiat or præcipe.	0 5 0	The filed copy . .	Adhesive.
6. On presenting an originating petition (except petitions in Divorce but including petitions of right) and filing the same. <i>Note.</i> — For the fee payable on filing a petition in Divorce: see Fee No. 76.	1 10 0	The petition . .	Impressed.
7. On sealing an originating notice of motion. <i>Note.</i> — No "setting down" fee is payable on an originating motion: see Fee No. 28.	2 0 0	The notice of motion .	Impressed.
8. On amending an originating petition or an originating notice of motion. <i>Note.</i> — No fee is payable on the fiat or præcipe.	0 5 0	The amended petition or notice.	Impressed.
9. On an originating <i>ex parte</i> application: — (a) if made in Court (b) if made in Chambers <i>Note.</i> — Where the applicant is directed to issue an originating summons, credit for the fee paid on the <i>ex parte</i> application is to be given against the fee payable on the summons.	1 0 0 0 10 0	The affidavit filed in support of the application. <i>Note.</i> — The affidavit must also be stamped with the appropriate filing fee. See Fees No. 87 and 101.	
<i>Appearances.</i>			
10. On entering an appearance: — for each person	0 2 6	The memorandum . .	Impressed.
11. On amending the same	0 2 6	The præcipe . .	Impressed.
<i>Interlocutory Applications, &c.</i>			
12. On sealing a summons (including a summons for directions) or a notice under Order XXX., Rule 5, and filing the same or a copy thereof.	0 5 0	The summons or notice	Adhesive.
13. On filing a notice of motion (except a motion for judgment) or a case on motion where no notice is filed.	0 10 0	The filed notice or case	Adhesive.

¹ Where any summons is sealed or issued solely for the purpose of an application in the Ch. D. for leave to deposit with the Treasury any securities in Court under any Treasury securities deposit scheme, no fee is taken upon the summons nor upon any order made thereon (Order as to Supreme Court Fees (Deposit of Securities with the Treasury), 1916).

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
14. On sealing a notice under Order XVI., Rules 48 or 55, and filing a copy thereof.	0 10 0	The filed copy . . .	Adhesive.
15. On bespeaking a request for the service of process or notice thereof out of the jurisdiction.	1 0 0	The præcipe.	
16. On sealing a commission or letter of request, for the examination of witnesses abroad.	1 0 0	The præcipe.	
17. On the examination of a witness before an officer of the Court (including the examination of a judgment debtor under Order XLII., Rule 32):— For each hour or part of an hour . . . <i>Note.</i> —Where the officer is required to take the examination away from his office his reasonable travelling and other expenses are also payable. This fee does not apply to an examination before an Examiner of the Court.	0 10 0	The order . . .	Adhesive.
18. On an application for copies of the notes of a Judge for the use of the Court of Appeal. For the fee payable for the copies: see Fee No. 107. <i>Orders made in Chambers.</i>	0 5 0	The application . . .	Impressed.
19. On entering or sealing an order as to the proceedings in a cause or matter.	0 5 0	In the Chancery and King's Bench Divisions and in Admiralty:—the order.	
20. On entering or sealing an order under Order XLV. or Rule 1 of Order XLVI.	0 5 0	In Probate and Divorce:—the summons or application on which the order is made.	
21. On entering or sealing any other order made in Chambers.	0 10 0		
<i>Entry or setting down for trial or hearing in Court.</i>			
22. On setting down a cause on motion for judgment under Order XXVII., Rule 11, or Order XL., Rule 1.	1 0 0	The præcipe.	
23. On entering a cause for trial pursuant to an order under Order XIV., Rule 8b.	1 0 0	The order or the filed copy of the pleadings.	
24. On entering or setting down a Probate action as a short cause.	1 0 0	The præcipe . . .	Adhesive.
25. On adjourning an originating summons from Chambers into Court.	2 0 0	The summons or the sealed copy thereof.	Impressed.
26. On filing a special case and setting it down for hearing in Court.	2 0 0	The præcipe.	
27. On setting down a point of law for hearing under Order XXV., Rule 2.	2 0 0	The præcipe.	
28. On entering or setting down any other cause or matter for trial or hearing or further consideration in Court except in cases:— (a) where it is otherwise provided by this Schedule. (b) where Fee No. 7 or Fee No. 40 has been paid.	2 0 0	The præcipe or the filed copy of the pleadings.	Impressed.
<i>Judgments, decrees, and orders given, directed, or made in Court.</i>			
29. On entering or sealing a judgment, decree, or order given, directed or made on the trial hearing or further consideration of a cause or matter in Court. And if the trial or hearing or further consideration occupies more than five hours for each additional complete hour a further fee of . . . <i>Note.</i> —This fee is payable where a final judgment, decree or order is made by consent on the hearing of an interlocutory application; but in such case no "setting down" fee is payable. Where this fee has been paid on a decree nisi in a matrimonial cause, no further fee is payable on the decree absolute.	2 0 0	In the Chancery and King's Bench Divisions and in Admiralty:—the judgment, decree or order. In Probate and Divorce:—the præcipe.	
30. On entering or sealing an order made in Court for security for costs.	0 10 0		
31. On entering or sealing any other order made in Court.	1 0 0		

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
<i>Judgments other than judgments given or directed in Court.</i>			
32. On entering or sealing a judgment pursuant to — (a) an order or certificate made in Chambers. (b) an order, certificate or award of an Official Referee.	} 0 10 0 0 10 0 1 0 0 2 0 0 }	The judgment.	
33. On entering or sealing a judgment without an order — (a) if the judgment does not exceed 50 <i>l</i> . (b) in all other cases.			
34. On entering or sealing a judgment pursuant to the certificate or award of a Special Referee.			
<i>Writs (see also Fees No. 70 and 148).</i>			
35. On sealing a writ of <i>subpoena ad testificandum</i> or <i>duces tecum</i> — for each witness	0 2 6 0 10 0	The <i>præcipe</i> .	
36. On sealing a writ of execution (including a writ of attachment).		The <i>præcipe</i> .	

Section II.

FEES PAYABLE IN THE CHANCERY DIVISION.

1. The payment of the percentages (Fees No. 45 to 53, inclusive) is to be made at such time or times as the Court or a Judge may direct.

2. Where the payment of a percentage is postponed until after the certificate has been filed the Court or a Judge shall prescribe the document to be stamped.

3. The Court or a Judge may in any case require the party having the conduct of the proceedings to make a deposit of stamps on account of the percentages which may become payable.

4. If for any reason an account or enquiry is not completed, the party conducting the proceedings shall pay such fee as the Judge may direct.

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
37. On presenting a petition of course and filing the same.	£ 0 10 0	The petition.	
38. On entering an order of course.	0 10 0	The order.	
39. On presenting a petition in a cause or matter (other than a petition of course) and filing the same.	1 0 0	The petition.	
On amending the same. <i>Note.</i> —No fee is payable on the fiat or <i>præcipe</i> .	0 5 0	The petition.	
40. On answering a petition (whether originating or in a cause or matter). <i>Note.</i> —No "setting down" fee is payable where this fee is paid: see Fee No. 28.	1 0 0	The petition.	
41. On filing pursuant to a statute, a special case or a scheme.	1 0 0	The special case or scheme.	
42. On filing a notice of appeal to the High Court and setting the appeal down for hearing.	2 0 0	The notice of appeal.	Impressed.
43. On filing a memorandum of service of notice of judgment.	0 10 0	The memorandum.	
44. On sealing a notice for attendance at Chambers on an originating summons to which an appearance is required to be entered and filing the same or a copy thereof.	0 5 0	The notice or the filed copy thereof.	

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
<p>45. On a sale of —</p> <p>(a) any lands or hereditaments or</p> <p>(b) any business (including the good-will thereof) or</p> <p>(c) any chattels — confirmed or approved by order or certificate —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the price up to 500,000<i>l.</i></p> <p>For the purpose of calculating the amount of this fee any sum payable out of the price to a mortgagee or other person entitled to a charge estate or interest on or in the property sold, who though consenting to or concurring in the sale is not a party to or bound by the proceedings is to be deducted from the price.</p> <p>If for any reason after payment of this fee the sale is not completed and the property is subsequently sold to another purchaser, credit is to be given for the fee already paid on the abortive sale against the fee payable on the completed sale; but in no case is any part of the fee paid on the abortive sale to be repaid.</p>	0 2 0	The order or certificate.	
<p>46. On a mortgage of:—</p> <p>(a) any lands or hereditaments, or</p> <p>(b) any business (including the good-will thereof), or</p> <p>(c) any chattels confirmed or approved by order or certificate —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the mortgage money up to 500,000<i>l.</i></p>	0 2 0	The order or certificate.	
<p>47. On a purchase of:—</p> <p>(a) any lands or hereditaments, or</p> <p>(b) any business (including the good-will thereof), or</p> <p>(c) any chattels confirmed or approved by order or certificate —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the purchase money up to 500,000<i>l.</i></p> <p>Purchase money which represents the proceeds of a sale on which Fee No. 45 has been paid or is payable is exempt from the payment of this fee.</p>	0 2 0	The order or certificate.	
<p>48. On a partition or exchange of any lands or hereditaments confirmed or approved by order or certificate —</p> <p>For every 100<i>l.</i> value of the property so partitioned or exchanged up to 500,000<i>l.</i></p> <p><i>Note.</i> — For the purpose of ascertaining the value of the property partitioned or exchanged the amount of any charge or encumbrance thereon is to be deducted.</p>	0 2 0	The order or certificate.	
<p>49. On taking an account of monies received by a person liable to account for the same —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the amount received up to 500,000<i>l.</i></p>	0 2 0	The certificate.	
<p>50. On taking an account of monies due to any person —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the amount found due up to 500,000<i>l.</i></p> <p>and if on taking such an account nothing is found due.</p> <p><i>Note.</i> — In a debenture holder's action this fee is not payable.</p>	0 2 0 1 0 0	The certificate.	
<p>51. On an inquiry as to damages —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the amount certified up to 500,000<i>l.</i></p>	0 2 0	The certificate.	
<p>52. On an inquiry to ascertain the person or persons interested in any property —</p> <p>for every 100<i>l.</i> or fraction of 100<i>l.</i> of the value of the property up to 500,000<i>l.</i></p> <p><i>Note.</i> — The amount on which this fee is payable shall not include any sum on which any of the Fees No. 45 to 49 inclusive has been paid or is payable.</p>	0 2 0	The certificate.	

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
53. On ascertaining pursuant to an order — (a) the real or outstanding or undisposed of personal estate of a deceased person, or (b) any property subject to a trust, or a mortgage or charge, or (c) any partnership assets — for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amount or value thereof up to 500,000 <i>l.</i> The amount on which this fee is payable shall not include: — (a) any outstanding debts believed to be bad or irrecoverable; (b) any sum on which any of the Fees No. 45 to 49 inclusive or Fee No. 52 has been paid or is payable; but shall include all sums paid after the commencement of the proceedings to creditors or to persons beneficially interested.	0 2 0	The certificate.	
54. On settling a scheme: — (a) for the management of a charity; or (b) where the amount involved does not exceed 1,000 <i>l.</i>	2 0 0	The certificate, or if there is no certificate the order confirming the scheme. The certificate.	
55. On settling any other scheme.	5 0 0		
56. On every certificate of a Master or a District Registrar. <i>Note.</i> — This fee is payable in addition to the percentage fees prescribed above.	0 10 0	The draft advertisement.	
57. On signing, settling, or approving an advertisement.	0 5 0	The schedule.	
58. On settling a lodgment schedule for payment into Court of purchase money or a balance of account.	0 5 0	The reference.	
59. (a) On referring a bill of costs to a Taxing Master from Chambers without an order. (b) On assessing costs for every 2 <i>l.</i> or fraction thereof allowed.	0 1 0	The bill of costs.	
60. On a reference to the Conveyancing Counsel of the Court.	0 10 0	The reference.	
61. On settling a deed or other instrument or particulars or conditions of sale.	1 0 0	The draft.	
62. On settling: — (a) a recognisance or bond (b) an undertaking in lieu of a bond	0 10 0 0 5 0	The recognisance bond or undertaking. The proposed reserve. The certificate.	
63. On fixing the reserve on a sale out of Court	1 0 0		
64. On a certificate of attendance to receive money payable in respect of a purchase or a mortgage.	0 5 0		

Section III.

FEES PAYABLE IN THE KING'S BENCH DIVISION.

	£ s. d.		
65. On filing: — (a) a notice of appeal to the High Court or (b) a special case pursuant to a Statute or the Common Law and setting down the appeal or special case for hearing.	2 0 0	The notice or special case.	
66. On an application by a Justice of the Peace (other than a Metropolitan Police Magistrate or a Stipendiary Magistrate) to take the oath of allegiance and judicial oath.	2 0 0	The oath.	
67. On sealing a notice of appeal from a Master or District Registrar to a Judge in Chambers.	0 5 0	The notice.	

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
68. On taking a receiver's account:— (a) where the account is less than 20l. (b) in every other case	0 5 0 0 10 0	The account or certificate.	
69. On a reference to a Master or District Registrar (for inquiry or trial)— for every hour or part of an hour	0 10 0	The order or certificate.	
70. On sealing:— (a) a writ of mandamus (b) any other prerogative writ	1 0 0 0 10 0	The præcipe.	

Section IV.

FEES PAYABLE IN THE PROBATE, DIVORCE AND ADMIRALTY DIVISION.

(A) PROBATE AND DIVORCE FEES.			
<i>Probate.</i>			
71. On sealing a subpoena under Court of Probate Act, 1858, Section 23.	0 10 0	The præcipe	Adhesive.
72. On depositing a script or other document in the Probate Registry. for each additional script or document deposited at the same time.	0 5 0 0 1 0	The præcipe or affidavit of scripts.	Adhesive.
73. On settling and sealing a citation	0 10 0	The præcipe.	
74. On filing a notice of appeal to the High Court and setting the appeal down for hearing.	2 0 0	The notice of appeal.	
75. On taking an account of an administrator and receiver <i>pendente lite</i> or other person liable to account:— for every 100l. or fraction of 100l. received without deducting any payments.	0 2 0	The account.	
<i>Divorce.</i>			
76. (a) On filing a petition	0 10 0	The petition.	
(b) On amending the same	0 5 0		
77. On filing a notice of appeal to the Divisional Court and setting down the appeal for hearing.	0 10 0	The notice of appeal.	
78. On settling questions for the jury	0 10 0	The draft questions.	
<i>Probate and Divorce.</i>			
79. On an appointment before a Registrar (except the hearing of a summons or motion):— for every hour or part of an hour	0 10 0	The præcipe.	
80. On signing, settling or approving an advertisement.	0 10 0	The draft advertisement.	
81. On filing:— (a) the certificate of a Registrar (b) the minute of a Registrar	0 10 0 0 5 0	The certificate. The minute.	
82. On sealing any document, unless otherwise provided.	0 5 0	The præcipe.	
(B) ADMIRALTY FEES.			
<i>In the Admiralty Registry.</i>			
83. On filing a notice of appeal to the High Court and setting down the appeal for hearing.	2 0 0	The notice of appeal.	
84. On filing:— (a) a consent to release (b) a notice under Order XXIX., Rules 2, 8, or 12. (c) an agreement under Order LII., Rule 23. (d) an admission of liability	0 10 0	The consent or notice or agreement or admission.	
85. On filing a notice under Order LXVII., Rule 10.	1 0 0	The notice.	
86. On entering a reference for hearing by the Registrar:— (a) in a default action (b) in all other cases	0 10 0 1 0 0		
On the hearing of the reference (except in a default action) such fee as the Registrar may consider reasonable having regard to the length and importance of the reference.	From 1 1 0 to 15 15 0	The præcipe	Impressed.

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
If the reference occupies more than one day, for each additional day or part thereof a further fee not exceeding.	15 15 0	The præcipe.	
If the reference is heard with merchants, such further fee for each merchant as the Registrar may consider reasonable.			
On filing (except in a default action) the Registrar's Report:—		The report.	
(a) if the amount allowed is less than 2,000l.	1 0 0		
(b) in all other cases.	2 0 0	The filed document.	
87. On filing any other document (including the Registrar's Report in a default action).	0 5 0		
88. On a certificate by the Registrar as to a judgment or order.	0 10 0	The certificate.	
<i>In the Marshal's Office.</i>			
89. On lodging with the Marshal a warrant, release, decree, order, commission, or other instrument under Order LXVII., Rule 10.	2 0 0	The instrument or order lodged.	
90. On the appointment and swearing of appraisers.	1 0 0	The certificate of appraisal.	Impressed.
91. On the delivery of a ship or goods to a purchaser.	2 0 0	Note.— These fees are paid by transfer from the proceeds in Court to the account of fees on proceedings.	
92. On the sale of a ship or goods:— for every 100l. or fraction of 100l. of the price.	1 0 0		
93. For attending the discharge of a cargo or the removal of a ship or goods.	2 0 0	The Marshal's certificate of execution.	Impressed.
And if the discharge or removal occupies more than one day for each additional day, a further fee of.	2 0 0		
In addition to the above fees, the following fees are also payable:—			
(a) where a ship or cargo is in the custody of the Marshal, the reasonable expenses of a ship keeper per day.			
(b) where the Marshal (or his deputy) is required for the purpose of discharging his duty to travel more than five miles from his office, his reasonable expenses for travelling and subsistence.			

Section V.

FEES PAYABLE ON REFERENCES TO AN OFFICIAL REFEREE.

	£ s. d.		
94. On entering a reference for hearing.	2 0 0	The præcipe.	Impressed.
95. On the hearing of the reference:— for every day or part of a day.	3 0 0	The præcipe.	Impressed.
And if the hearing is in the country, subsistence allowances for the Referee and his Clerk at the rate of 2l. and 1l. respectively for each night they are absent from London and their reasonable travelling expenses are also payable.			
The fees, allowances, and expenses specified in this item shall be payable in advance by the party having the conduct of the case from day to day as the case proceeds.			
96. —(a) On a certificate of an Official Referee.	1 0 0	The certificate.	Note.— The amount shall be noted on every office copy of certificate.
(b) On a report or award of an Official Referee.	2 0 0	The report or award.	

Section VI.

FEES PAYABLE IN THE COURT OF APPEAL.

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
97. On filing a notice of appeal:— (a) If the appeal is entered in the Interlocutory List. (b) If the appeal is entered in any other List.	2 0 0 5 0 0	The notice of appeal.	
98. On filing a notice of cross appeal:— (a) If the appeal is entered in the Interlocutory List. (b) If the appeal is entered in any other List.	1 0 0 2 0 0		
99. On entering or sealing the order made on the hearing of the appeal:— (a) If in an Interlocutory List . . . (b) If in any other List . . .	1 0 0 2 0 0 1 0 0	The order.	
100. On entering or sealing any other order made by the Court of Appeal or a Judge thereof (including orders for leave to appeal and for security for costs).			

Section VII.

FEES PAYABLE ON FILING DOCUMENTS; ON SEARCHES FOR AND INSPECTIONS OF DOCUMENTS; AND FOR COPIES OF DOCUMENTS.

<i>Filing Documents.</i>			
101. On filing any document in any office of the Supreme Court (except the Admiralty Registry) unless otherwise provided by this Schedule. <i>Note.</i> —This fee is not payable on filing— (a) a document already stamped with a fee prescribed in this Schedule or (b) a notice withdrawing a cause or an appeal. The fees on filing documents in the Admiralty registry are set out in Section IV. (B) <i>ante</i> , Nos. 83 to 87 (inclusive).	0 2 6	The filed document.	
<i>Searches.</i>			
102. On a search for an appearance or an affidavit, and inspecting the same.	0 1 0	The search ticket.	
103. On any other search including inspection for each hour or part of an hour occupied.	0 2 6	The search ticket.	
104. For a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided.	0 2 6	The certificate.	
105. For a certificate pursuant to Order LXI., Rules 23 or 24, other than a certificate given by the Registrar of Bills of Sale.	0 10 0	The request.	
<i>Copies of Documents.</i>			
106. For an office copy:— for each folio . . .	0 0 8	The office copy . . .	Adhesive.
107. For a plain copy (except the printed copies mentioned in the next item):— for each folio . . . and if more than one copy be spoken:— for each folio of the first copy . . . for each folio of any additional copy . . .	0 0 5 0 0 5 0 0 2	The copy . . .	Adhesive.

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
108. For a printed copy of an order: — for each folio	0 0 2	The copy	Adhesive.
109. For examining a plain copy and marking the same as an office copy: — for each folio	0 0 3	The office copy	Adhesive.
110. For a copy in a foreign language and for a copy of a plan, map, section drawing, photograph, or diagram: — the reasonable cost thereof as certi- fied by the officer of the Court.	-	The præcipe or copy	Adhesive.

Section VIII.

FEES PAYABLE IN THE PAY OFFICE.

111. On a certificate of the amount and de- scription of any money, funds, or se- curities.	0 2 0	The request	Impressed.
On redating any such certificate	0 1 0		
112. On a transcript of an account for each opening, including the request therefor.	0 2 0	The transcript.	
113. On a request to the Paymaster, Bank of England, or a Registrar of the Probate, Divorce, and Admiralty Division (un- less otherwise provided), for any of the following purposes: paying, lodging, transferring or depositing money, funds, or securities in Court without an order, or money in addition to the amount directed by an order to be paid in; pay- ing out of Court any money without an order or a certificate of a taxing officer; information in writing in re- spect of any money, funds, or securities, or any transaction in the Pay Office.	0 2 0	The request	Impressed.
114. On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the Paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during 15 years.	0 2 6	The request.	
115. On lodgment in Court under the Trustee Act, 1893, and S.C. Funds Rule 41 (b).	0 5 0	The office copy of Schedule.	
116. On preparing a power of attorney	0 5 0	The power of attorney	Impressed.
117. On a request for a certificate of the lodg- ment of any funds in Court: — (a) In Lunacy	0 1 0 }	The request	Impressed.
(b) In any other Division	0 2 0 }		

Section IX.

FEES PAYABLE ON THE TAXATION OF COSTS.

118. On obtaining a reference to a Taxing Master on a document entitling the applicant to taxation or to the opinion of a Taxing Master thereon, not being a judgment or order of the Supreme Court or a request from an officer thereof or a notice of discontinuance.	1 0 0	The document.	
119. On the taking of a cash account between the solicitor and his client on a tax- ation under the Solicitors Act, 1843, or otherwise: — for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amounts found to have been received and paid.	0 1 0	The bill.	

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
120. On the taxation of a bill of costs — (a) where the amount allowed does not exceed 4 <i>l</i> . (b) where the amount allowed exceeds 4 <i>l</i> . for every 2 <i>l</i> . or fraction thereof allowed.	0 2 0 0 1 0	The bill . . . The bill.	Impressed.
121. On the allowance of the result of a taxation except in the case of taxations by the Sitting Master.	0 10 0	The bill.	

Note. — The Taxing Officer may in any case require the bill of costs to be stamped before taxation with the amount of fees which would be payable if the bills were allowed by him at the full amount thereof, including in cases under the Solicitors Act, 1843, the fee payable in respect of the cash account.

Section X.

MISCELLANEOUS FEES.

	£	s.	d.		
<i>Distringas.</i>					
122.— (a) On filing a notice under Order XLVI., Rule 4.	0	10	0	The notice . . .	Impressed.
(b) On amending the same . . .	0	2	6	The amended notice . . .	Impressed.
<i>Registration of Judgments.</i>					
123. On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868.	0	10	0	The certificate.	
124. On registration of a certificate issued by an Irish or Scottish Court under that Act.	1	0	0	The certificate.	
125. On a certificate of the entry of a satisfaction under that Act.	0	2	6	The certificate.	
126. For a search in the registers of Irish and Scottish Judgments:— for each name	0	2	6	The præcipe . . .	Impressed.
<i>Bills of Sale.</i>					
127.— (a) On filing a bill of sale and affidavit therewith, when the consideration (including further advances) — (i) does not exceed 100 <i>l</i> (ii) exceeds 100 <i>l</i> ., but does not exceed 200 <i>l</i> (iii) exceeds 200 <i>l</i> (b) On filing under the Bills of Sale Act, 1878 and 1882, any other document.	0	5	0 0 1 0	The bill of sale . . . The document.	Impressed.
128. On filing an affidavit of re-registration of a bill of sale or any such other document.	0	10	0		
129. On filing a <i>fiat</i> of satisfaction . . .	0	5	0		
130. For an official certificate of the result of a search in one name in any register or index under the custody of the Registrar of bills of sale, if not for more than five folios. for every additional folio for every additional name, if included in the same certificate.	0	5	0 0 0		
131. For a continuation search, if made within one calendar month of date of official certificate (the result to be endorsed on such certificate).	0	2	0	Certificate of search . . .	Impressed.

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
<i>Deeds of Arrangement.</i>			
132. Where the total estimated amount of property included under or the total amount of composition payable under a deed shall appear from the affidavit of the debtor not to exceed the following amounts, the fee on filing such deed shall be as under:—			
(a) where the property does not exceed 1,000 <i>l</i> .	1 0 0	The affidavit . . .	Impressed.
(b) where the property exceeds 1,000 <i>l</i> , but does not exceed 2,000 <i>l</i> .	2 0 0		
(c) where the property exceeds 2,000 <i>l</i> , but does not exceed 3,000 <i>l</i> .	3 0 0		
(d) where the property exceeds 3,000 <i>l</i> , but does not exceed 4,000 <i>l</i> .	4 0 0		
(e) where the property exceeds 4,000 <i>l</i> .	5 0 0		
(f) in every case to which the above fees do not apply.	2 0 0		
133. On every certificate, endorsed on an original deed, of the registration thereof.	0 5 0	The certificate . . .	Impressed.
134. On every copy of a deed transmitted to a County Court Registrar:— for every folio or part of a folio contained in such copy.	0 0 3	The copy . . .	Adhesive.
135. On every statutory declaration or notice filed in the office for registration of deeds of arrangement, pursuant to the Deeds of Arrangement Act, 1914, or the Deeds of Arrangement Rules, 1915.	0 2 6	The declaration . . .	Adhesive.
136. On searching the register (for every name inspected) and on inspecting the filed copy, including the limited extract to be taken pursuant to the Act and Rules.	0 2 6	The præcipe . . .	Impressed.
<i>Commissions, &c.</i>			
137. On sealing or issuing a commission to take oaths or affidavits in the Supreme Court.	5 0 0	The commission or certificate.	Impressed.
138. On sealing any other commission unless otherwise provided.	2 0 0	The præcipe . . .	Impressed—In Probate Registry, adhesive.
139. On a report by a Committee of Judges on an estate bill pursuant to Standing Order of the House of Lords, No. 153.	10 0 0	The report . . .	Impressed.
140. On an allowance of byelaws or table of fees.	2 0 0	The byelaws or table of fees.	Impressed.
141. On taking the acknowledgment of a deed by a married woman.	1 0 0	The præcipe . . .	Impressed.
142. On appointment of commissioners under glebe exchange.	1 0 0	The præcipe . . .	Impressed.
143. On an application with or without subpoena for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office.	2 0 0	The application.	
The officer may require a deposit of stamps on account of any further fees and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.			
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.			

ITEM.	Fee.	Document to be Stamped.	Character of Stamp.
144. On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same. And in addition thereto for each exhibit therein referred to and required to be marked.	0 2 0 0 1 4	The affidavit, affirmation, or declaration. <i>Note.</i> —The amount of stamps should be marked on the office copy.	
145. On taking a recognisance or bond or vacating the same. ¹	0 10 0	The recognisance or bond or order.	
146. On assignment of a bond	0 5 0	The assignment.	
147. On filing for registration a certificate of the Controller of the Clearing Office under paragraph 1 (iv) of the Treaty of Peace Order, 1919.	0 10 0	The certificate.	
148. On sealing or issuing any writ, summons, citation, notice, <i>fiat</i> , certificate or other document and filing a copy thereof where no other fee is prescribed by this Schedule.	0 5 0	The filed document.	

¹ The Chancery Judges have resolved that only one fee is to be charged on vacating a Receiver's security whether it is by one bond or recognisance only, or by two or more.

THE OPINION OF THE SUPREME JUDICIAL COURT
ON WAIVER OF THE RIGHT TO JURY TRIAL
IN CRIMINAL CASES IN MASSACHUSETTS.

COMMONWEALTH vs. ARTHUR W. ROWE & another.

Suffolk. Submitted May 24, 1926.

Opinion filed October 14, 1926.

Present: BRALEY, CROSBY, PIERCE, CARROLL, WAIT, & SANDERSON, JJ.

Constitutional Law, Trial by jury. Practice, Criminal, Waiver of trial by jury. Superior Court. Jurisdiction.

Report by *Lummus, J.*, of proceedings and rulings at the trial of indictments found and returned in the Superior Court for the county of Suffolk.

WAIT, J. Arthur W. Rowe and Lemuel Rowe were indicted by the Grand Jury for the Suffolk District in eleven counts for larcenies. The amounts alleged to have been stolen in counts 5, 6, 8, 9 and 11, equalled or exceeded \$100 in value and were less than \$100 in value in the remaining counts. Under our statutes, therefore, the offences charged were felonies in the former and misdemeanors in the latter counts. G. L. c. 266, § 30.

These defendants were at the same time charged in another indictment with conspiring to steal — a misdemeanor. They pleaded not guilty to both indictments when arraigned, and later, before trial, each signed and filed a waiver of trial by jury in the following form: "I, . . . , the defendant in the above entitled cause, having been indicted for larceny and conspiracy and having pleaded not guilty, hereby request as a constitutional right, that I be tried and my guilt or innocence determined by a judge of the Superior Court sitting without jury, and in support of my request I hereby waive my right for this trial under the constitution and statutes of the Commonwealth to be tried by a jury." The signature of each defendant was witnessed by his counsel.

They proceeded to trial before a single judge of the Superior Court sitting without a jury, who, after hearing evidence,

decided both law and fact. He found both defendants guilty upon the indictment for conspiracy; Lemuel Rowe not guilty upon all the counts of the indictment charging larceny; and Arthur W. Rowe guilty upon counts 1, 6, 7, 8, 10 and 11, and not guilty upon the remaining counts of that indictment.

At the close of the evidence for the Commonwealth and after it had rested, the defendants filed, in each case, a motion which it was agreed should be considered as separate motions "as to such charges as are misdemeanors and to such charges as are felonies" and which was as follows: "Now come the defendants in the above entitled action and withdraw their waiver of a trial by jury previously filed by them and move that this trial be declared a mistrial because not tried before a jury." It was signed in person by each defendant.

The motions were denied and trial proceeded. The defendants introduced evidence and at the close of the evidence filed motions that upon all the evidence findings of not guilty be entered upon each count. These motions also were denied. Upon the indictment for larceny the court ordered that Lemuel be discharged and go without day; and, being of opinion that important and doubtful questions arose on the exceptions claimed, with the consent of Arthur W. Rowe, reported the cases to this court and continued the indictments to await its determination. A similar report and continuance was made in the case of the indictment for conspiracy.

The first question for our determination is, whether any valid trial has been had.

The defendants contend that they are not bound by the papers signed by them demanding as a constitutional right a trial by the court without a jury and waiving their constitutional right to a trial by jury, and, further, that the Superior Court sitting without a jury has no jurisdiction to try an indictment for felony or for misdemeanor.

No question arises under the Constitution of the United States. *Hallinger v. Davis*, 146 U. S. 310. We have no doubt that the right to trial by jury guaranteed by our

Constitution to every person, Part I, arts. 12, 15, is a privilege which the person may waive for reasons satisfactory to himself. This seems the necessary conclusion not only from the form of words used in the Constitution, but also from the language of this court in carefully considered opinions. Decisions in other jurisdictions which have held that the right to a trial by jury cannot be waived where crime rising beyond the grade of "petty offenses" is charged, have turned upon the interpretation of words substantially different from those used in our Constitution; see *State v. Cottrill*, 31 W. Va. 162, and cases there cited; or upon a view of public policy which our decisions show has not prevailed in this Commonwealth, see *State v. Woodling*, 53 Minn. 142.

Art. 12 provides: "And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury," and thus by its exception shows that its authors did not regard the right as one of the "inalienable rights" of the free man. It could be waived by enlisting in the army or navy. No prohibition is placed upon the individual in regard to it. The prohibition is placed upon the state; and that prohibition has its limitations, not only with regard to the army and navy just referred to, but in the exception in art. 15 "of cases in which it has heretofore been otherwise used and practiced," "in causes arising on the high seas," and cases "such as relate to mariner's wages."

We find nothing in the words of our Constitution which declares or manifests an intention to deprive the individual of power to refuse to assert his constitutional right to trial by jury.

The precise question which we are now asked to decide never before has been presented for decision to this court; but there are a number of cases in which the nature of the right has been touched upon and which aid in its determination. The recent case of *Commonwealth v. Kemp*, 254 Mass. 190, which may seem to have passed upon it, confined its decision to the facts of that case, and is not authority controlling here. In *Commonwealth v. Kemp* there was no

disputed question of fact before the court. The parties submitted the case on agreed facts. There was, thus, no issue of fact for a jury, and so, in truth, no waiver of the right to a jury trial. It is open to serious question, also, upon the facts of the case, whether the defendant, in view of the petty nature of the offence charged, had a constitutional right to a jury trial. *Schick v. United States*, 195 U. S. 65. The opinion, however, touched upon the question of waiver and cited, pages 191, 192, 40, the Massachusetts cases beginning with *Jones v. Robbins*, 8 Gray, 329, which have stated that the constitutional right to a trial by jury can be waived. It is unnecessary to discuss the cases there referred to, or to repeat what was said by this court in *Parker v. Simpson*, 180 Mass. 334, 346, *et seq.*; *Bothwell v. Boston Elevated Railway*, 215 Mass. 467; *Crocker v. Justices of the Superior Court*, 208 Mass. 162; and *Ashley v. Three Justices of the Superior Court*, 228 Mass. 63, in which the history of the right to trial by jury has been fully expounded. Modern research into the history of the jury has rendered of little value many of the historical discussions of the right to jury trial at common law contained in the decisions of the courts of this country; and it may be doubted whether even now that history is fully known. Again and again, as the cases referred to illustrate, this court has treated the right as a privilege sacredly regarded by the Commonwealth and preserved to the individual against assault by the State; but a privilege which he could waive, and, in certain circumstances, would be treated as waiving.

We see no good ground for taking a different position in the facts of this case. The form of the waivers, signed in person by the defendants, witnessed by their counsel, asserting a constitutional right to a trial by the court without jury, and their conduct in proceeding with trial until the Commonwealth rested before seeking to withdraw their waivers, make clear that they understood fully what they were doing. There is nothing to indicate that they have been misled in reliance upon any advice of the court which can be regarded as error in law. See *Bishop*, New Criminal Prac. 120(2). They had no right to withdraw their waivers.

The rulings refusing their requests were correct. There was no lack of power to waive the constitutional right to a trial by jury.

We are compelled, however, to hold that the waivers are nugatory and there has been no valid trial.

Chief Justice Shaw, in *Commonwealth v. Dailey*, 12 Cush. 80, 83, laid down as the law of Massachusetts, that a defendant "may waive any matter of form or substance, excepting only what may relate to the jurisdiction of the Court." It remains to consider whether the Superior Court without a jury had power to try the defendants, and to impose a valid sentence if it found them guilty. *Commonwealth v. Kemp*, *supra*, page 40, says: "There is no jurisdictional requirement that all criminal trials must be by jury," and it points out that where all the facts are agreed, or where, in any way, only a question of law is to be decided, there is no occasion for a jury; and that the judge alone can make decision and impose a valid sentence. That case further comments on the words of St. 1924, c. 485, § 1, that a judge of a district court may "sit in the superior court at the trial or disposition with or without a jury . . . of any misdemeanor . . ." as implying that there may be trials without a jury; but it does not indicate that the words convey any grant of power to try contested facts without a jury.

We know that during the colonial period criminal offences were tried by the Court of Assistants, at times, without a jury. The records of the court show that defendants were asked how they would be tried, and, occasionally, chose trial by the bench rather than by a jury, see I *Records of the Court of Assistants*, 102, where the report shows that to an indictment Walter Gendall "pleaded not Guilty Refferd himself for his trial to the Bench" and was found guilty by the magistrate and sentenced. In the same year, 1677, John Watts "put himself on his Tryall by God & the bench," was tried and convicted, *Id.* 103; and 104, William Pope, complained of for "his abusive Carriage in Cursing of the Authority here making an order to prevent the spreading of ye small pox, &c", "not willing to be tryed by a Jury but referring himself to the Governor & magistrates" was found guilty and sentenced.

The "Body of Liberties" adopted in 1641 provided that: "XXIX. In all actions at law, it shall be the libertie of the plaintife and defendant, by mutual consent, to choose whether they will be tried by the Bensh or by a Jurie, unless it be where the law upon just reason hath otherwise determined. The like libertie shall be granted to all persons in Criminall cases."

Acts providing that all trials should "be by the verdict of twelve men, peers or equals . . . except in cases where the law of the province shall otherwise provide," and establishing courts, in which "all matters and issues in fact arising or happening [within the province] shall be tried by twelve good and lawful men of the neighborhood," were passed in 1692-3 and in 1697, but never became law because they were disallowed by the Privy Council. Prov. Laws 1692-3, c. 11; c. 33, § 16; 1697, c. 9, § 10. *Mountford v. Hall*, 1 Mass. 443, decided in 1805, and *Shirley v. Lunenberg*, 11 Mass. 376, decided in 1814, illustrate cases where trial by jury was not had. No statute passed before the enactment of Revised Statutes in 1836 has been called to our attention which made trial by jury obligatory. Apparently at arraignment defendants who pleaded not guilty were asked how they would be tried. See statement of Thatcher in argument, *Commonwealth v. Hardy*, 2 Mass. 303, 306. Although the answer probably invariably was that he placed himself upon the country, the inquiry implied that a choice of method existed.

The Revised Statutes, however, by c. 123, § 3, provided that "No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court." They provided further, c. 136, § 28, "When any person is arraigned upon an indictment, it shall not be necessary, in any case, to ask him how he will be tried." These were new enactments which seem to imply that in proceedings begun by indictment only one method of trial of disputed facts existed, and that the jury was an indispensable part of the court for such trial. This implication is further supported by the provisions of c. 137, § 1:

"Issues of fact, joined upon any indictment, shall be tried by a jury, drawn and returned in the manner prescribed by law for the trial of issues of fact in civil causes," also a new enactment.

These provisions of statute law have been continued in force to the present time, through the varied revisions of our laws, and are now G. L. c. 263, § 6; G. L. c. 277, § 71; and G. L. c. 278, § 2. The words of R. S. c. 137, § 1, were modified by inserting "or complaint" after "indictment" in the Revised Laws (R. L. c. 219, § 2), which took effect January 1, 1902; and the present statute applies to issues of fact joined in the Superior Court upon a complaint as well as upon an indictment. No comment upon the change was made by the commissioners in their report. It is possible that they regarded the section as relating merely to the method of drawing and returning the jury for criminal trials. This court, however, in *Green v. Commonwealth*, 12 Allen, 155, 168, cites the section, then G. S. c. 172, § 1, as defining the trial, rather than the jury.

It is noteworthy that no claim of right to trial without a jury in a criminal matter has been made, heretofore, to this court. In our opinion it has been the belief of lawyers generally that in the absence of statutes giving the power, a judge without a jury did not constitute a court competent for the trial of disputed facts in criminal cases, which rose above the degree of petty offences.

There are many decisions and *dicta* in other jurisdictions that there is no competent tribunal for such trial in the absence of a jury, unless authority so to proceed has been conferred by statute or by the Constitution of the State upon the court without a jury. We do not attempt to cite them all. A very full reference to them is made in *State v. Cottrill*, *supra*, and again in *State v. Baer*, 103 Ohio St. 585. See also *State v. Maine*, 27 Conn. 281; *Danner v. State*, 89 Md. 220; *Cancemi v. People*, 18 N. Y. 128; *State v. Batley*, 32 R. I. 475; *Mays v. Commonwealth*, 82 Va. 550; *Schick v. United States*, *supra*.

No precedent has been called to our attention at common law for the trial by the court, without a jury, of any crimes

except those described in adjudged cases and by elementary authorities as minor or petty offences involved in the internal police of the State. The common law of England had been to some extent modified in Massachusetts before the adoption of our Constitution, and it was the common law as so modified which was taken over as the law of this Commonwealth under our Constitution. *Commonwealth v. Knowlton*, 2 Mass. 530, 534.

Trials of contested facts in serious criminal offences had been had here without a jury. From 1694 onward, however, we are without record of such a trial. In *King v. Perkins*, Holt, 403, decided in 1698, Holt, C.J. said that all the judges were of opinion that, although the parties consented, a jury could not be withdrawn in a capital case. The insistence of the people of Massachusetts just prior to our declaration of independence from England upon trial by jury as a safeguard for the individual, is well known. The care taken to protect it against legislative assault is shown by the provisions of our Bill of Rights. We think, therefore, that in interpreting the language of statutes which have come to us practically unchanged since 1836, we must bear this history in mind, and, giving to the words their ordinary meaning, interpret them as making the jury a constituent part of the tribunal for the determination of disputed facts whenever a defendant pleaded not guilty to an indictment, whether that indictment charged felony or misdemeanor, and whether or not such had been the common law of the Commonwealth before 1836.

Commonwealth v. Dailey, *supra*, is not to be taken as deciding otherwise. The court distinctly stated that it was not passing upon "whether the court can authoritatively order any other mode of trial, in cases civil or criminal." The court which tried Dailey had a legal jury when the trial began. The accused was not under indictment, so that the statute in regard to trials by jury did not apply. If he had a right to a jury trial by twelve jurors it was not by virtue of the statute. The Municipal Court of the City of Boston, in which the trial took place, had jurisdiction to try such a complaint on the facts and, it would seem, in the absence

of indictment, without a jury. St. 1799, c. 81. This court recognized that consent could not confer jurisdiction; but, as already stated, decided merely that the accused could "waive any matter of form or substance, excepting only what may relate to the jurisdiction of the court."

It is true that the Superior Court, although created by statute, is a court of general jurisdiction. *Crocker v. Justices of the Superior Court*, *supra*; but this does not prevent specific limitation of its powers by statute. Such limitation does exist. The Legislature, which imposed the limitation, can remove it. In so doing, it will be acting within its constitutional powers, as the right of the accused to a jury trial on disputed facts will not be lessened.

We need not consider the right to a trial without a jury asserted in the waivers. As we construe the law, the Commonwealth has not provided any tribunal for such a trial. There is no right in the individual to compel the Commonwealth to supply such a tribunal, which this court can vindicate.

Our determination that the court was without jurisdiction to determine the disputed facts renders it unnecessary to pass upon the other exceptions. The judge should have ruled that the proceeding before him was a mistrial. The exceptions of the defendants to the refusal are well taken. The order must be that the findings of the judge be set aside, and the cases stand for further proceedings in accordance with law.

So ordered.

A. S. Allen, C. C. Steadman, & C. H. McGlue, for the defendants.

G. Alpert, Assistant District Attorney, for the Commonwealth.







